

**THE EVOLUTION AND EDUCATIONAL IMPLICATIONS OF THE
CHILDREN'S RIGHTS MOVEMENT; A STUDY IN TIME
PERSPECTIVE**

by

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I declare that ***The evolution and educational implications of the children's rights movement; a study in time perspective*** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.



.....

C S LE ROUX [Mrs]

..... 24 April 1995

DATE

**DEDICATED TO MY HUSBAND HENNIE AND OUR THREE SONS,
JUAN, ETTIENNE AND PIERRE**

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THE EVOLUTION AND EDUCATIONAL IMPLICATIONS OF THE CHILDREN'S RIGHTS MOVEMENT; A STUDY IN TIME PERSPECTIVE

SUMMARY

The dissertation traces events that contributed towards a climate where the status of children changed from property to that of person status with the concomitant recognition of children's rights. Social conditions in England, America and France from late preindustrial times to the early twentieth century were investigated. The United Nations' role in establishing children's rights documentation and an evaluation of these documents in terms of the educational implications thereof were described and discussed. The African perspective towards international children's rights documents was outlined while the attempts of Africa to address the unique needs of the African child were detailed. In the light of the changing social orientation in the Republic of South Africa, children's rights advocacy in South Africa was reviewed. Criteria for evaluating documents addressing the needs of children were proposed and based on the findings of the study, recommendations regarding the direction of children's rights advocacy were advanced.

KEYWORDS:

human rights; children's rights movements; African children's rights charters; United Nations children's rights documents; National Children's Rights Committee; child advocacy; child labour; compulsory schooling; juvenile delinquency; education rights.

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1

INTRODUCTION AND GENERAL ORIENTATION

*A reading in history provides no easy answers.
At the minimum it can stimulate reflection,
and at the most result in corrective action.*

(Takanishi 1978)

CHAPTER 1

INTRODUCTION AND GENERAL ORIENTATION

1 BACKGROUND TO THE STUDY

Most societies are in a state of continual transformation - transformation that directly influences the various social structures as well as the individual members of the society irrespective of their gender, race or age. Yet another characteristic of society - which is concurrently complicated by the above-mentioned inevitable societal changes - is that the status, rights and responsibilities of the members of the society differ. One of the determinants of such social distinction, is the *age* of the individual - whether before the law, within the family unit or within the broader social context. It is commonly conceded that adult members of a society are entitled to particular inalienable rights and that they have the right to exercise these rights merely by virtue of the fact that they are adult. Proof of competency to exercise these rights is not required - the sole requirement is proof of having reached majority.

Children, it seems, have for the most part been regarded as extensions of their parents with no particular legal or social status of their own (Eckard 1993). However, at present there is heightened consciousness and increased awareness concerning the status of children and issues related to childhood. Topics of contemporary concern and debate involving children range from protection and nurturance issues (e.g. child abuse, child labour, nutrition and welfare) to issues dealing with children's participation in decisions in matters that affect them directly (e.g. custody disputes, quality of education) (Feshbach & Feshbach 1978: 1).

Within the past 300 years, children have moved from the state of having no special or separate status to being elevated as targets for social reform (Takanishi 1978: 8, 16). This awareness of and involvement with the status and rights of children has been effectual in opening the field of children's rights to investigation.

1.1 Motivation for the research

Contemporary society has attempted to display its perception and appreciation of children as autonomous individuals by drafting an internationally acclaimed document in which the aspired social status and position of the child are defined. The document referred to is the **United Nations Convention on the Rights of the Child** (see **Appendix 1**). When the **Convention on the Rights of the Child** was adopted, the Republic of South Africa was not a member of the **United Nations** and consequently did not ratify the convention. Nevertheless, South Africans have become increasingly mindful of showing their concern and commitment to their youth and it is this concern that aroused the researcher's interest to investigate the terrain of children's rights and in particular the issue of children's rights in the Republic of South Africa.

Allow a cursory review of the recent activities in the field of children's rights in the Republic of South Africa. Following consultation between the **United Nations Children's Fund** (UNICEF), political groups and non-governmental organisations (NGO's) concerned with the welfare of children in South Africa, the **National Child Rights Committee** (NCRC) was established in 1990 under the auspices of UNICEF. The NCRC *inter alia* attempts to further the recognition and to promote the adoption of the **United Nations Convention on the Rights of the Child**. Between 27 May and 1 June 1992, the NCRC with *Molo Songololo*, a children's magazine, and the **Community Law Centre** of the University of the Western Cape, arranged an international summit on the rights of children in South Africa. Two hundred children representative of race, class, gender and disability between the ages of 12 and 16 from 20 different regions in South Africa attended the summit in Somerset West, Cape Town. At the summit, the delegates drafted and adopted the **Children's Charter of South Africa**. This event signified a historical turning point in establishing a culture of children's participation in children's rights advocacy. [Children's Charter of South Africa 1992: 3]. Two weeks later this charter formed the basis of discussions at a four-day international conference on children's rights - the first of its kind held in the Republic - which was arranged by Mr Dullah Omar, Minister of Justice, then director of the **Community Law Centre** at the University of the Western Cape [Eckard 1993; Galloway 1992: 12].

The **African National Congress** (ANC) also contributed towards addressing the issue of children's rights. In its **Policy Guidelines for a democratic South Africa** adopted at its national conference held between 28-31 May 1992 and released in May 1993, the ANC

specifically mentions its policy regarding the rights of youth and refers in particular to the recognition of the rights of children as enshrined in the United Nations **Convention on the Rights of the Child** (Ready to Govern 1992: 43).

The previous South African government also took steps to address the issue of children's rights. On 29 January 1993, the Department of Foreign Affairs announced that the South African ambassador to the **United Nations**, Mr Jim Steward, had, on behalf of the South African government, signed five international conventions in New York, among them the **Convention on the Rights of the Child** (South Africa: Department of Foreign Affairs 1993). In Stockholm later that year, FW de Klerk, then president of the Republic of South Africa, and Nelson Mandela, then **ANC** president, co-signed the United Nations **Convention on the Rights of the Child**. This event that took place on 12 December 1993 coincided with the two leaders' joint acceptance of the Nobel Peace Prize award [Nobel men sign pledge for welfare of children 1993: 15].

Children's rights were to feature again on 28 January 1994 when the *Constitution of the Republic of South Africa*, Act No. 200 of 1993 was passed. In Chapter 3 the fundamental rights of the citizens of the state are considered and *Article 30* refers specifically to the rights of children (South Africa 1994).

In January 1994 the **Unisa Centre for Women's Studies** with the **National Institute for Public Interest Law and Research** hosted a one-day seminar in Pretoria on children's rights in South Africa.

As South Africa embarks on a new political dispensation, established laws will need to be reevaluated and redrafted. Among these laws will be those that apply to children - laws that relate *inter alia* to their role and status as children in society as well as laws that regulate the provision for and nature of education. Inevitably the provisions and conditions encompassed in legislation will control and affect the circumstances and events relating to the everyday lives of children.

This study was however not solely undertaken to pursue a topic of interest, but also to contribute towards providing a broader perspective on the issue of children's rights.

1.2 Contribution of the study

The chief aim of conducting the study is to extend the knowledge base regarding the evolution of children's rights movements and the establishment of a children's rights culture both internationally and in the Republic of South Africa and as such the emphasis falls on searching for and documenting relevant data.

The contribution of this research could be described as both general and specific. In view of the envisaged establishment of a new societal and political dispensation for the Republic of South Africa and the concomitant changes anticipated by and at all levels of society, one can expect - in keeping with prevailing global trends - that the needs and interests of various "minority" or "disenfranchised" groups that have until now been disregarded, will increasingly be addressed. Among these groups to receive attention and interest will be children. The study is therefore specifically significant to interpreting, evaluating and guiding efforts that address children's rights issues as manifest in the Republic of South Africa. The Republic, as a newcomer to the scene of advocacy for children's rights, could benefit from examining the attempts of those who have accomplished much in the field. Thus, an account of the historical development and evolution of children's rights advocacy movements and related events is provided. An attempt will also be made to outline the contribution of *inter alia* economic, social and political factors that have influenced the establishment of charters addressing the rights of the child. It is hoped that policy makers who will be involved in drafting legislation affecting children and those who will be assigned the responsibility of carrying out these prescriptions, will benefit from this research.

It seems that the United Nation's **Convention on the Rights of the Child** has been taken as the point of departure by parties who have advanced proposals for establishing children's rights charters in this country (see 1: 1.1). In view of the Republic of South Africa's cultural diversity and its predominant third world character, it could be useful to try to determine whether South Africa could face obstacles in interpreting and implementing a charter based on the **Convention on the Rights of the Child**. Some governments from developing countries in Africa believe that they are not bound by current international human rights standards, because, they contend, these standards were largely conceived and formulated by westerners and reflect cultural values that are foreign to non-western traditions and thus, to a degree, are contrary to third world priorities. It is a fact that some African cultural traditions do accord certain persons such as women and minors a lower status, thereby denying them the full range of claims to which the more privileged members of the society

- in effect, adult men - are entitled (An-Na'im & Deng 1990: xi, xiii). Such a predisposition needs to be noted as it could well influence the viability of implementing the **United Nations** convention.

On the other hand, the study is of general significance. From an educational point of view it is necessary to determine the effect of children's rights movements on the provision as well as the character of education for children - or vice versa. Since the inception of children's rights movements the issue of compulsory education has featured and this matter will need to be traced together with the development and evolution of the children's rights movements. Equally necessary to consider are issues related to education, for example, child labour, and state and social provision for the welfare of the child. The elements noted above will be included in the research envisaged.

2 STATEMENT OF THE RESEARCH PROBLEM

In the synopsis provided in the foregoing section, issues that have featured in the development of children's rights, have been suggested. These issues include the changing conception of the child and social, political and economic considerations.

The issues briefly outlined suggest that children's rights, both in the Republic of South Africa and elsewhere in the world, are not only of interest to social or welfare organisations and individuals concerned with the plight of children and related issues, but that children's rights issues have also attracted the attention of politicians and consequently the state. Put simply, children's rights have become a political issue (see 1: 1.1 & 1.2). This fact could have significant implications for establishing, interpreting and implementing charters advocating the rights of the child as well as the evaluation of such charters.

The relationship between state and parent, state and child, and state and education could be described as delicate. The extent to which a state can inoffensively intervene in matters affecting the child (which includes the relationship with parents and the education provided for the child), depends on several factors. It is known that states throughout the world and at different periods in time, exercise varying degrees of control over their citizens.

Furthermore, a point that could prove to be central to the issue of children's rights is the relationship and interaction between children's rights issues and the provision of education.

It is evident that the issues cited above and the interrelationship among them contribute towards constituting a topic worthy of research. An analysis of the research problem revealed certain underlying elements that served as the impetus for and simultaneously guided the research undertaken. To clarify this complex issue the research was initiated by the desire to provide answers to the following questions:

- What course did the development of children's rights movements (within the framework provided in the demarcation [see 1: 5.1]) take?
- Which factors brought about the establishment or influenced the development of children's rights movements?
- What were the underlying motives of individuals or organisations who made (and make) it their task to protect and/or promote the rights of children?
- What measures have been taken to ensure the protection of the rights of children?
- What were (and are) the educational implications of children's rights movements?

3 NATURE OF THE STUDY

The nature and activities of educational research are determined by the particular perspective from which the phenomenon is viewed and consequently, historical educational research is characterised by a predisposition unique to the perspective.

3.1 The nature of educational research

According to McMillan and Schumacher (1993: 8), research is a *systematic process of collecting and logically analysing information for some purpose*. In addition, research appears oriented towards one or both of two ends: to extend existing knowledge by developing reliable knowledge or to provide a solution to a problem. These two ends are not mutually exclusive and the orientation is one of emphasis.

Research provides new perspectives regarding the phenomenon being studied while the results of research can be used to aid policy-making. Research findings should facilitate

choices between alternatives and could be used to justify such decisions. Also, publications relevant to the field of study can be read critically and interpreted intelligently because of the exposure to an extended base of knowledge (McMillan & Schumacher 1993: 25).

3.2 Historical educational research

Historical [education] research is a systematic process of describing, analysing and interpreting the past based on information from selected sources as they relate to the topic under study (Wiersma 1991: 203).

Historical research deals with events of the past. The historical educational researcher thus needs to make logical deductions from data that he gathers from the past. In the interpretation of the data he needs to take the context of the event into account. Interpretation takes on special implications in historical research because the events have already occurred. This fact reaffirms the importance of interpreting the data in the broader context (Wiersma 1991: 203).

Educational reform and social reform are issues often served by historical research. If the historical perspective is known, these issues are often better understood. Not only does historical research provide a perspective for decision making about educational problems and assist in understanding why things are as they are, but it can also be useful in predicting future trends and provide important information to avoid previous mistakes (Wiersma 1991: 204).

3.3 Activities in the research process

To enhance the validity and reliability of the research undertaken, it is necessary to use a systematic process. The purpose of mentioning which method was followed is to suggest how insight was obtained; to indicate which system was used to work through the subject matter in an attempt to collect, analyse and systematise the data (Wiersma 1991: 8).

Historical research is a holistic process in which there is considerable overlap of activities. For example, in keeping with the requirements of historical-educational research, in this study interpretation runs throughout the process not only when making value judgements

about the authenticity of sources, but also when deciding their relevance or interpreting the course and effects of the events against the background of the time at which they occurred. The four main steps that are identified tend to overlap and often run concurrently. According to Wiersma (1991: 206), these steps are the following:

1. Identification of the research problem.
2. Collection and evaluation of source material.
3. Synthesis and presentation of information.
4. Analysis and interpretation with the formulation of conclusions and the drawing of generalisations.

The research undertaken for this dissertation was directed by these steps. During the study it was time and again found that these steps did indeed overlap and run concurrently although the content chapters (chapter 2-5) focused essentially on steps 2 and 3 while the final chapter (chapter 6) was based mainly on the activities of step 4.

3.4 Collection of data

The data used in the preparation of this dissertation, in accordance with the requirements of the second step in the activities of the research process (see 1: 3.3), was obtained from a wide spectrum of primary and secondary sources not only from the field of education but also from the fields of philosophy and various social sciences. All sources consulted are listed at the end of this dissertation.

3.4.1 Primary sources

The following types of primary texts were consulted: newspaper clippings, journal and periodical articles, legislation as enactments and regulations as prescribed by statutory bodies. In addition, unstructured and in-depth interviews were conducted with individuals who are experts in the field of children's rights and related issues. In these interviews, questions that encourage the dissemination of a wide range of information were posed. The interviewee was encouraged to elaborate extensively. Conferences and seminars that dealt with the topic of children's rights or related issues served as an additional source of information.

3.4.2 Secondary sources

A computer search for literature pertinent to the topic was conducted. To facilitate the extraction of the required data from authentic and reliable sources, a careful selection was made from the titles suggested. Where a number of sources that covered a particular issue being researched were available, every attempt was made to verify the data and facts cited.

3.5 Technical considerations

The third step of the research activity relates to *inter alia* the presentation of data. The presentation of data needs to be done in such a way to ensure the comprehensiveness and unity of the study as a whole. The following technical issues need to be considered when reading the dissertation.

3.5.1 Cross-references

Throughout the dissertation where necessary or applicable, cross-reference will be made to related issues elsewhere in the dissertation. The technique used is as follows: the first digit refers to the chapter, the subsequent digits to the section heading in that chapter. For example: 3: 2.6 refers to chapter 3, section 2.6.

3.5.2 Appendixes

Because the United Nations **Convention on the Rights of the Child** and the Organisation of African Unity **African Charter on the Rights and Welfare of the Child** are frequently referred to throughout the dissertation, the relevant sections of these documents are included as appendixes. The **Children's Charter of South Africa** is a document unique to the Republic of South Africa and for this reason it is included as an appendix.

3.5.3 Laws and statutes

All efforts were made to trace the full particulars of laws and statutes quoted or referred to

in the text. Details regarding South African and British legislation could be found, but unfortunately reference works on American and French legislation did not cover the historical periods referred to in the text of this dissertation. The style of the British legislation might require explanation. In the example **1819 Factory Act (59 Geo. 3) c.66**, the *1819* refers to the year in which legislation was passed, *Factory Act* is the name of the act, the *59* refers to the year of the reign of the monarch, *Geo. 3* refers to the monarch and the number (King George III), while *c.66* refers to the chapter of the act.

With regard to the French laws referred to in chapter 3 of this dissertation, the sources consulted did not provide the English translations. The English equivalent provided in brackets is thus a free translation of the French.

3.6 Explanation of key concepts

Before a discussion of the research problem can be entered into, it is necessary to clarify the key concepts fundamental to the study.

3.6.1 Evolution

The Concise Oxford Dictionary (1988: 334) clarifies the term evolution as *development (of design, argument etc.); origination [of species] by development from earlier forms*. This explanation alludes to progression, a succession or sequence in events; development through consecutive changes. It could be expected that circumstances or events coincident to an incident or undertaking could affect or determine the direction and essence of the manifestation of that particular incident in the future. It is as a result of these external and internal influences that the process of evolution is generated.

3.6.2 Educational implications

Among other things, education is a conscious, purposive intervention by an adult in the life of a non-adult to bring him to independence. In this sense, education is the positive influencing of a non-adult by an adult, with the specific purpose of effecting changes of significant value. Education can thus be regarded as a purposive act, designed to guide the

child's humanisation on a determined course. The final result cannot be scientifically determined or guaranteed. As the educand shows himself progressively amenable to decide for himself and to accept responsibility for autonomous choice, the educator removes himself progressively, leaving the educand to act on his own accord (Van Rensburg & Landman 1986: 307).

Implication refers to those matters that are not expressly stated, that which is related to or implied by something else (Concise Oxford Dictionary 1988: 501), and which is by natural inference or deduction an issue of relevance, consequence or outcome.

Educational implications thus refers to issues that impact on, are relevant to or influence the phenomenon of education or aspects integral to education.

3.6.3 Child

For the purpose of this dissertation and unless otherwise stated, a child is an individual who has not yet been afforded the status of adult and is a person under the age of 18. The Concise Oxford Dictionary (1988: 160) describes a child as an individual who has not yet reached the age of discretion. This statement implies a developmental requirement - an issue that is likely to be associated to particular cultural and social conditions.

3.6.4 Rights

A definition of rights is bound to the context of social morality, politics and law. Considered generally, rights seem to be social conditions that ought to be maintained, moral principles on aspects of social life. A right binds one to refrain from preventing others from acting in certain ways. In this sense, a right is relational - it pertains to the moral responsibilities that arise among humans (Machan 1989: 1-2). Chapter 2 provides a broader evaluation and survey of the issue of rights.

3.6.5 Declarations, conventions and charters

Throughout the study reference will be made to documents as official or legal papers. The three most generally used terms are briefly described.

A **declaration** is a statement of general principles concerning a particular issue that is made public. No government is under an obligation to execute these principles for it is not a legally binding document (McCurdie 1992: 6).

A **convention** is a detailed international agreement. When a convention is ratified by a particular government, the government undertakes to comply with the principles specified in the convention (McCurdie 1992: 7).

A **charter** is a formal and detailed list of rights (McCurdie 1992: 8).

3.6.6 Advocacy

Westman (1979: 44) describes child advocacy as *assuming in varying degrees and ways, responsibilities for promoting and protecting the developmental needs of both an individual child and children in general.*

Child advocates are parents or adults with competence and knowledge to speak for children. Child advocacy requires the competency to promote the child's interests and the congruent interests of those who are essential to the child's welfare - whether these individuals are in the child's home, school or other parts of the community (Westman 1979: 44).

4 AIMS AND OBJECTIVES OF THE STUDY

Research in the field of education requires that one looks beyond current educational practices and sets longer-term objectives: educational research may thus not have immediate practical outcome. The objective of educational research should be, not to solely increase the efficiency of the existing system in terms of accepted criteria but to provide the opportunity to explore potentially more effective alternatives (Eggleston 1979: 5 cited in Bell

1987: 12].

The purpose of this study, in the light of the aforementioned, is to add to a body of current knowledge - to develop knowledge by collecting, explaining and interpreting the available data. Facts need to be interpreted to provide explanations for the past and to throw light on the educational implications of these past events for the future.

With these encompassing goals in mind, the following aims and objectives of the study are identified.

4.1 Aims of the investigation

The aim of the study is to establish which considerations and events were responsible for the establishment of current charters that address the issue of children's rights. In addition, those considerations that specifically influenced the provision of compulsory education will be explored in an attempt to learn the underlying motivation for instituting compulsory education and to determine what incentives currently play a role in this regard. It is inevitable that those issues that stand in close relation to the provision of education for children will also be studied and be referred to throughout the study.

4.2 Objectives of the investigation

The objectives which this dissertation hopes to achieve can be stated as follows:

- To **obtain clarity** regarding the concept of "rights". An attempt will be made to establish the origin of the notion of rights and to determine criteria used to decide what it is that constitutes a right. In addition the implication of exercising rights will be investigated.
- To **gather information** on the efforts initiated by society, either as individuals or collectively to protect children from abuse, neglect and a lifestyle in which child labour was the norm and to **review** the various measures taken to provide compulsory education for the youth.
- To **describe and analyse** the implications and effects of various charters and conventions in which provision has been made to protect the interests of children with regard to compulsory education and related issues and to identify particular

concerns/features inherent to these various documents.

- To give an **appraisal** of current documentation (with particular reference to the United Nations **Convention on the Rights of the Child**) in which children's rights are addressed and to **assess** the educational implications of these movements and charters, and to **identify** those issues that motivated the instituting/establishing of these documents.
- By carrying out the above steps, to obtain greater **insight** into the issue of children's rights and to be able to **provide guidelines** or **present criteria** according to which charters that are compiled with the aim of serving the child's interest can be **assessed**.

5 SCOPE OF THE STUDY

The volume of relevant data from the past is extensive and consequently judicious selection of material in temporal and spacial terms is necessary.

5.1 Demarcation of the field to be studied

To place the issue of children's rights in its contemporary context in perspective, it was necessary to refer to past views regarding the position and status of children. It was also necessary to give an account of the conceptualisation of the issue of rights. However, the main emphasis of the investigation is on circumstances surrounding the child from the period of the industrial era to the present. Exemplars were drawn from England, America, France and Africa, with emphasis being placed on the current and projected situation in the Republic of South Africa. These exemplars were selected because social reform activities initiated in these countries had resulted in the drafting of documents that addressed the issue of human rights. It was assumed that these countries, because they had been sensitised to the plight of the exploited, abused and neglected, would inevitably proceed to address the needs and rights of children.

5.2 Organisation of content

The research findings are appropriately organised in separate chapters. In chapter 2, the conceptualisation of the term **rights** was undertaken. Issues addressed include the nature of rights, the relation between rights and needs and between rights and obligations. This chapter reviews the history of the idea of human rights, the significance of the idea of human rights and the implications of exercising rights. African perspectives on human rights also receive attention. To conclude the chapter the issue of children's rights and child advocacy are considered.

The evolution of children's rights movements is reviewed in chapter 3. Aspects to receive attention include historical trends in the conceptualisation of the child and the concomitant status awarded to the child, legislation regarding child labour and compulsory education and the implications that this had for the provision of education. Other related issues (*inter alia* child labour, child destitution and neglect, juvenile delinquency) that influenced the establishment of the rights of the child will necessarily also be discussed. Because an extensive amount of data needs to be assimilated to adequately review these aspects, this chapter is considerably longer than the other chapters of the dissertation.

The United Nations Convention on the Rights of the Child forms the focus of chapter 4. Events and declarations that ultimately lead to the constitution of the convention are reviewed while highlights of the convention and predominant themes such as *best interests of the child*, *evolving capacities*, and *changing developmental status* are explained. Articles that refer directly to education are discussed and an appraisal of the consequences of the implementation of these articles and their interrelatedness is provided.

Chapter 5 highlights the **evolution of children's rights movements in Africa** with special reference to the development of such movements in the Republic of South Africa. Reference is made to the conceptualisation of human rights and children's rights in African perspective. The **African Charter on the Rights and Welfare of the Child** is discussed and the **Convention on the Rights of the Child** is reviewed from an African perspective. The development of children's rights movements in the Republic of South Africa is also briefly outlined. Current and proposed legislation on children's rights in South Africa is reviewed.

In the final chapter, chapter 6, a **synthesis of findings and guidelines for the assessment of charters addressing children's rights** is provided. This requires that the research findings be summarised and evaluated in accordance with sound pedagogical principles.

6 CLOSING REMARKS

During the research process, the spotlight falls on fields other than education and the investigation depends on data collected from, *inter alia*, the fields of philosophy, social history and politics. Clearly it is necessary to adopt an interdisciplinary approach. It is the sincere wish of the researcher to make a meaningful contribution to increase the pool of knowledge from which information, insight and inspiration for becoming involved in activities related to the issue of children's rights within the field of education can be drawn. With these aspirations in mind, the study now focuses on the first issue salient to this investigation: the essence of the concept of rights.

A DISCOURSE ON THE CONCEPT "RIGHTS"

*No declaration of rights can ever be exhaustive and final [but is an] ...
expression of the moral conscience of civilisation at a given moment in history.*

(Jacques Maritain 1947)

CHAPTER 2

A DISCOURSE ON THE CONCEPT "RIGHTS"

1 WHY DO HUMANS NEED RIGHTS?

Although humankind represents the epitome of God's creation and is generally considered intellectually superior to other creatures, humans are extraordinarily vulnerable to the onslaughts of fellow human beings. The history of humankind reflects a constant endeavour to secure honourable and just conduct towards one another. To protect himself from societal exploitation, manipulation and abuse, man has found it necessary to create life enhancing social policies that ensure his survival. These social constructs are portrayed as policies for *human rights* - either explicitly codified and documented or implicitly understood. Because the directives contained in these policies are of human design, they are fallible and could be viewed as either socially just or unjust (Davies 1988: 1-2; Wronka 1992: 23).

It is beyond the scope of this dissertation to provide a detailed account of the development of the idea of human rights, however, it would be an acute oversight to totally ignore the historical development and background of this matter. To illustrate the major developments, certain historical periods have been selected and events that have influenced the progress of human rights will be recounted.

2 A BRIEF HISTORY OF THE IDEA OF HUMAN RIGHTS

Human rights is a term that has only been in use since after World War II and the founding of the **United Nations** in 1945. Until this time, the term *natural rights* had been in use - a term associated with and derived from the concept of natural law. Previously the term *rights of man* had been used, but was soon discarded because of its failure to encompass the rights of *women* (Weston 1989: 13). However, the idea of fundamental human rights is not an entirely modern notion as the basic tenets of the concept are found in antiquity.

2.1 The fundamental rights of man in antiquity

Human rights scholars trace the origin of the idea of human rights to ancient Greece [compare Aristotle's [384-322 BC] theory of equality and justice] and Rome (where it was related to the natural law doctrine of Stoicism founded by Zeno of Citium [c. 300 BC]). Stoics, like Seneca (3BC-65AD) and Aurelius (b. 121 AD) taught the *Brotherhood of Man* and the notion of a universal force that pervaded all creation and to which humanity was accountable for its conduct. This natural law extended to all human beings whatever their citizenship or status (Mayer 1960: 105; Wronka 1992: 41; 44-45). During this period natural law doctrines taught mainly the *duties*, as distinguished from the *rights* of man. It might be of interest to note that the legitimacy of slavery and serfdom were endorsed in this early natural rights theory, while the idea of human freedom and equality - comparable to the modern idea of human rights - was negated (Weston 1989: 13). Nonetheless, as time went by, humankind increasingly challenged domination and pursued the ideal of human freedom.

2.2 The Middle Ages: feudalism and the plight of the serfs

Before the idea of natural rights as a general social need and reality could become entrenched, basic changes in the attitudes and customs of society had to take place. For example, towards the end of the Middle Ages, a society of scattered Anglo-Saxon and Danish tribes and territories gradually united to form the state of England. The feudal chiefs under the despotic rule of King John Lackland grew increasingly truculent and on 15 June 1215 at Runnymede on the Thames, the feudal barons, [with large popular support] constrained the king to sign the **Magna Carta**. In essence this document ended the arbitrary despotism of the king. Feudal interests were protected from royal tyranny and the document sought to secure and assure the basic rights of the people - notably the clergy, nobility and the bourgeoisie - against the arbitrary whims of the ruler (Iwe 1986: 89-90). Undoubtedly, this document signifies a landmark in the development of the idea of human rights. Significant too, is the manner in which this agreement was reached. Instead of resorting to violent insurrection - the customary means of those times - the nobility had chosen to negotiate a peaceful settlement without calling for revenge (Wronka 1992: 51).

2.3 Fundamental social and individual rights

During the Renaissance, the practice of translating natural law into natural rights was furthered. The teaching of St. Thomas Aquinas (1225-1274) on the European continent attests to this. According to Aquinas human beings are endowed with eternal and inalienable rights that can never be renounced or diminished by the claim of the divine right of kings (see 2: 3.2.1). The essence of this doctrine is that the individual alone has ultimate value. The dignity and power of man are embodied in natural law - man alone of all created beings, can reason and through reasoning can come to know the *divine* nature of things. To Aquinas, this ability was an unchallengeable expression of the dignity of the human person (Weston 1989: 13).

The intellectual achievements and discoveries of the seventeenth century encouraged a belief in natural law and universal order. Galileo, Newton, Hobbes, Descartes, Spinoza, Bacon and Locke *inter alia* all made their contributions in their field of specialisation. Confidence in human reason and consequently, in man's ability, escalated. Man was convinced that he was able to provide answers to all society's problems and he increasingly believed in the perfectibility of human affairs. It was in this climate that the Englishman, John Locke (1632-1704) advanced his views (Iwe 1986: 96; Weston 1989: 13).

2.4 Humanitarian intervention and the social theorists

Locke indisputably stands out as a significant figure of this period - arguably the most important natural law theorist of these times and a man whose influence was to endure for years to come. In writings that both coincided with and influenced the uprisings of England's **Glorious Revolution** of 1688, Locke proclaimed that certain rights pertain to individuals as human beings: the right to life, liberty and property. Man possessed these rights because they had been in existence prior to man's entering *civil society*. The right to enforce these natural rights was surrendered to the state when *civil society* was entered, but the rights themselves were never surrendered. The state was under an obligation to secure these natural rights for its members. However, if the state failed in this responsibility, the people had the right to engage in responsible revolution against the state. An outcome of the revolution of 1688 was the drafting of the **English Bill of Rights** on 13 February 1689. The aim of the bill was to redress the grievances of the populace against the Crown. It condemned autocratic and arbitrary exercise of governmental power and affirmed that the

king had no right to violate the fundamental laws of the kingdom (Iwe 1986: 96; Weston 1989: 13).

The insurrection of the English in 1688 influenced - and no doubt contributed towards - similar dissensions that spread to North America and Europe. The inhabitants of the Americas were the descendants of those people who had fled the Anglo-Saxon world in search of freedom from persecution and from restrictive administration. These were the people who were involved in the events that culminated in the proclaiming of the **American Declaration of Independence** on 4 July 1776. Thomas Jefferson (1743-1826), the colonial leader - greatly influenced by Locke's ideas - played a prominent role in drafting the declaration. However, Jefferson adjusted Locke's triad of rights: the right to property was substituted for *the pursuit of happiness*. It is conjectured that Jefferson did not deny the right to property, but he did not believe that it was on the same fundamental level as the rights to life and liberty. Jefferson declared his fellow citizens were *a free people who claimed their rights as derived from the law of nature and not as the gift of a chief magistrate*. In the preamble of the declaration it is stated that all men are created equal, that they are endowed by their Creator with certain unalienable rights, and among these are life, liberty and the pursuit of happiness (Iwe 1986: 101; Weston 1989: 14; Wronka 1992: 63).

Scarcely a decade later, the proletariat of pre-revolution France clamoured to be liberated from the burden of feudalism, over-taxation and unjust exactions. For the **French Revolution**, the three French writers - Montesquieu (1689-1755), Voltaire (1694-1778) and Rousseau (1712-1778) - who built on the ideas of Locke and others, provided the ideological armament. They vigorously attacked religious and scientific dogmatism, intolerance, censorship and social-economic restraints in their search to discover and enforce universally valid principles according to which man and society could be governed justly. On 26 August 1789, the National Assembly adopted the **French Declaration of the Rights of Man and Citizen** and feudalism in France was finally abolished. The French declaration asserted man's right to liberty, equality, to private property, and to freedom of thought and expression. These rights were declared universal, natural, inalienable, imprescriptible and inviolable (Iwe 1986: 106, 110; Weston 1989: 14).

The uprisings described above can be attributed to rulers who had failed to respect the principle of freedom and equality coveted by their subjects. In defiance, those who had been denied these natural rights, claimed them through social revolt.

2.5 Conflicting opinions and opposition to natural rights tenets

One may be left with the impression that there was no opposition to the advocacy of human rights. This is not true. The doctrine of natural rights was principally opposed for example, by the Englishmen David Hume (1711-1776), Edmund Burke (1728-1797) and Jeremy Bentham (1748-1832). Burke criticised those who believed in the equality of man remarking that such talk would awaken false ideas and vain expectations from those destined to be the proletariat. Bentham scorned the idea of natural rights saying *natural rights is simple nonsense ... nonsense on stilts* while Hume was in complete agreement and insisted that natural law and natural rights were unreal metaphysical phenomena. This assault on natural law and natural rights began during the late eighteenth century and intensified in the following centuries. John Mill (1806-1873) and others emphasised that rights were ultimately founded on utility; they were a function of and were unique to the cultural and environmental variables of a particular community. By the end of the nineteenth century there were few who would defend the *rights of man* along the lines of natural law (Weston 1989: 14-15).

2.6 Human rights: a universal campaign

Although the heyday of natural rights proved short, the essence of the idea of human rights endured. During the industrial age, reformism actions brought amongst other things, the abolition of slavery, legislation regarding factory labour and compulsory education. As a result, the circumstances and plight of the exploited and neglected improved. Before the 1940s it had been the responsibility of each country to protect its citizens' rights and little or no intervention on behalf of those subjected to human rights violations could be found. It was the horrors of the two World Wars and in particular the atrocities of Nazi Germany and Mussolini's fascists in Italy that shocked the world and demanded that the world community make a conscious effort to avert a recurrence of similar tragedies (Totten & Kleg 1989: 36; Weston 1989: 14; Wronka 1992: 75).

In the wake of World War I, the League of Nations was established by the Treaty of Versailles in 1919. The Covenant of the League reflected very limited international concern with human rights and the drafters seemed preoccupied with maintaining security and achieving peaceful settlement of disputes. To secure protection of the rights of minorities, the Minorities Protection System was established and several countries made

declarations before the **League of Nations** in this regard. These instruments guaranteed a variety of freedoms for their people. The **System of Mandates**, also established by the covenant, applied to the German and Ottoman territories and made provision for individuals to petition the League to examine alleged human rights violations (Wronka 1992: 82-84).

The **United Nations** was formed in the wake of World War II, and developed the human rights standards that the **League of Nations** had touched on. In an effort to explicitly specify the nature of these rights and to find efficient ways to ensure their recognition and realisation, the **Universal Declaration of Human Rights** was adopted on 10 December 1948. Representatives from diverse nations endorsed the rights included in the declaration as *a common standard of achievement for all peoples and all nations*. The declaration was the first document in history to state that every person on earth is entitled to both political and civil as well as economic, social, and cultural rights (Totten & Kleg 1989: 37; Wronka 1992: 84).

The **United Nations** has been responsible for several other declarations and charters that have promoted human rights (see 2: 5.5). The organisation also promotes human rights through associated and specialised agencies for example **UNICEF** (see 1: 1.1) established in 1946 and the **United Nations Educational, Scientific and Cultural Organisation** [UNESCO] founded in 1946 (Iwe 1986: 129-130). It is within this milieu that the **United Nations Convention on the Rights of the Child** was adopted in 1989 - an issue that is to receive attention further on in this dissertation.

3 THEORETICAL FOUNDATIONS OF HUMAN RIGHTS

Human rights is a popular topic that is currently widely debated in various social spheres including the religious, political and moral. A reason for the current concern could perhaps be the urge to take action against the attitudes and activities of totalitarian ideologies and regimes that fiercely challenge the conventional idea of what constitutes just and fair conduct towards man. A further reason is perhaps to be found in the contemporary desire to attain equality among all of humankind. As Laqueur observes it is *in the uneasy borderland between people's demands on the one hand and their moral convictions on the other that the idea of rights has always belonged* (Laqueur & Rubin 1979: 16).

Because of the diverse cultural and social settings in the various countries of the world, as well as divergent levels of development in these countries, it is argued that it is unreasonable to assume that standard rights could be applied worldwide. The goal it appears, is to propose rights that could be classified as inalienable, universal and absolute.

This chapter aims to clarify the fundamental issues regarding the philosophy of *rights* in relation to human rights. The discussion that follows is an attempt to, simply and logically, consolidate and explain the definitions, terminology and arguments surrounding rights as presented in the sources studied.

3.1 Human rights defined

Although divergent definitions of *rights* are offered, recurrent themes or precepts within these definitions are discernible. Several selected definitions are cited below:

A human right by definition is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human (Cranston quoted in Renteln 1990: 47).

Rights seem to be social conditions that ought to be maintained, moral principles pertaining to aspects of social life. Rights are relational - a right pertains to the moral responsibilities that arise among humans (Machan 1989: 2).

The idea of human rights is a social construct that reflects social acknowledgements of individual and communal basic and perceived needs in a particular historical period. In short, human rights are statements of human needs (Wronka 1992: 22).

Human rights are not bought, nor are they created by any other specific contractual undertaking. They belong to a man simply because he is a man (Laqueur & Rubin 1979: 21).

To speak of a right as something distinctive is therefore to claim some protective immunity or exclusivity in relation to others as well (Stoljar 1984: 9).

The following underlying assumptions can be deduced from these definitions: it is *humans* (as *individuals*) who have rights, these rights are *relational* and they are *universal*.

3.1.1 Individuality and human nature

There is an ancient western belief that every human being possesses certain basic rights simply by virtue of being human. They are inherited with man's humanity (Laqueur & Rubin 1979: 23). The generality of this statement could signal difficulties in discerning exactly what these rights are. Although the *humanness* of man is not subject to evolution, his circumstances and expectations have undergone transformation - in varying degrees in various regions - since his creation. Can it be assumed that the essence of humanity has accordingly remained unaltered?

Western political tradition grants only individual adult moral agents the privilege of holding rights. It has been suggested that the *individual* is itself a recent - seventeenth and eighteenth century - idea, not common to every era. An interesting argument put forward is that individualism is correct only if human nature is not a feature of the world, but an artifact or invention. Put differently, either the individual exists and has always existed, in which case there is no human nature nor natural rights, or the individual has been invented and there is a human nature, but no individuals have natural rights since no individuals exist to enjoy such rights (Renteln 1990: 46). Such a philosophical base for individualism, although thought provoking, is inadequate. Human individuality is the idea that a person can be a unique being who nevertheless shares a nature with other unique beings. The problem of reconciling individuality and human nature arises because of the tendency towards reductionism instead of pluralism, for the individual, although a member of the human species, acquires significant individuality by making qualitatively different choices in his or her life (Machan 1989: 8-9).

3.1.2 The relational nature of rights

The second commonality apparent from the definitions is that a right is inherently relational. A right can be described in terms of a triadic relation: *who* is the right *for*, *who* is the right *against*, and *what* is the right *about* or *to* (Stoljar 1984: 1). An individual's right impacts not only on himself but also in varying degrees on those societal activities in which he is involved. A person does not and cannot enjoy rights in isolation - one's very existence is relational.

3.1.3 Universality and human rights

Human rights are presumed to be universal in character. A contention raised by Renteln (1990: 49-50) is that human beings have a predisposition to generalise from their own perspectives and western philosophers in particular are accused of being prone to projecting their moral convictions on others. Underlying the idea of universality is the presumption that everybody, whatever culture, background and predisposition, thinks alike. Those views or notions that a particular society or civilisation cherishes, will be advanced as absolute (Strauss 1965: 99) and it is debatable whether such an opinion is proper.

From these definitions several contentious thoughts are raised. To stimulate further deliberation, an overview of the origin and traditional theories of rights is provided.

3.2 Philosophical background

In the introduction of this chapter (see 2: 1) it was mentioned that man has found it necessary to protect himself from injustices that, due to his coexistence with others, might befall him. In short, man attempts to establish a just society in which each individual can equitably fulfil his human potential. However, man finds himself in an inequitable world and therefore needs to actively protect and secure his interests (Machan 1989: xxiv, 1). The following overview sketches features of man's conceptions and endeavours to establish such safeguards.

3.2.1 Divine rights versus natural rights

In medieval times God was unquestionably the source of authority and earthly rulers [generally conceded to be the clergy of the Church under leadership of the Pope] were entrusted with the task of representing God's divine authority on earth. Next, kings claimed divine right by repudiating the authority of the Pope and they will be remembered for claiming even greater power over the subjects under their dominion. It appears that these were the circumstances that prevailed throughout most of the civilised world during the Middle Ages. However, during the British civil war of the 1640s (that remained unresolved until 1688), subjects who were growing more wilful and less submissive, revolted against the king and a series of events that would lead to the collapse of divine right and the institution of natural rights, were set in motion (Laqueur & Rubin 1979: 5; see 2: 2.4.)

The idea of natural rights has its foundation in the notion of natural law where a ruler or government is seen to be subject to an authority higher than himself. This opinion is a principal feature of the doctrine of the Stoics' and Middle Ages' thought (Wronka 1992: 46-47; see 2: 2.1). Natural law was subsequently considered the standard against which all manmade laws were to be judged. To contest the injustice of a manmade law, the higher authority of God or natural law was appealed to. Subsequently, natural law was translated into natural rights - a change that emphasised the position of the individual and the legitimate claims he could make in terms of human nature. A specific right to which all of humankind (because of their inherent nature) could lay claim, was the right to life (Renteln 1990: 48).

3.2.2 The three generations of rights

The idea of human rights is closely related to theories of democracy and liberalism. The reformism theories associated with the English, American and French revolutions promoted the development of the idea of natural rights as rights that pertain to individuals. Locke (see 2: 2.4) wrote of the rights to life, liberty and property and these ideas were, with the right to trial by a jury, included in the **English Bill of Rights** enacted by the British parliament after the **Glorious Revolution** in 1689. The United States constitution of 1776 defined these rights in greater detail while the **French Declaration of the Rights of Man and Citizen** (1789) addressed similar political and civil rights (Laqueur & Rubin 1979: 10,

Indubitably, the modern notion of rights has reached its highest aspiration in the United Nations **Universal Declaration of Human Rights** (1945). The three main categories of rights addressed in this document are roughly similar to the three normative themes of the French Revolution: the right to liberty (*liberté*) - also associated with the English and American revolutions - equality (*égalité*) and solidarity (*fraternité*). These categories of rights are also referred to as the three generations of rights: the first generation of civil and political rights (liberty), the second generation of social and cultural rights (equality) and the third generation of solidarity rights. These three generations of rights emanated from different historical periods and reflect the struggle of people against the absolutism and arbitrariness of tyrannical rulers (first generation), socially structured poverty (second generation) and the inadequacies of domestic sovereignty (third generation) (Wronka 1992: 25-28). This is undeniably a simplification of an intricate historical record, however, it hopefully presents an uncomplicated explanation of the issue.

These three *generations* of rights are also associated with the concepts of positive and negative rights.

3.2.3 Positive and negative rights

Rights are commonly referred to as either positive or negative. Those rights that impose no burden or duty on the state - the state has a duty of non-interference - are called negative rights. First generation rights are also called "negative" freedoms for example the freedom from interference in privacy or the freedom from arbitrary arrest. Positive rights are those rights conferred and enforced by the legal system of the country. Positive rights are facts - they are what is actually possessed. Positive rights therefore require governmental action or intervention. Second generation rights are also called "positive" freedoms, i.e. the right to just governmental intervention in the quest for human dignity. Such rights include the right to work and the right to education (Laqueur & Rubin 1979: 17; Renteln 1990: 45; Wronka 1992: 27).

3.2.4 Moral and legal rights

Once human rights come into existence through legislative enactment, they are enforceable and can be enjoyed. The presupposition of such a lawful or legal right is that it should be just, i.e. morally acceptable. It is argued further that moral rights precede and are independent of legal rights. Moral rights belong to the category of what *ought* to be, while legal rights are, by definition, what *is*. The distinction becomes crucial when a legal system does not provide for a particular right, for the incentive to legislate in terms of that right can be fortified if the existence of a related moral right can be proved. It is maintained that the validity of legal rights is dependent on whether the right can be justified morally (Laqueur & Rubin 1979: 19; Renteln 1990: 45-46).

3.3 Theories regarding rights

Rights possibly epitomise the ideals of man. To transform these ideals into reality however, they need to be enacted - to have the force of law behind them. Once this is achieved, these rights can be exercised and enjoyed by individuals and be enforced or implemented by the higher authority (Wronka 1992: 28-29).

Wringe (1981) distinguishes three traditional theories of rights that account for and justify the idea of rights as exercised. The main aspects of each theory will briefly be highlighted. Hereafter, a theory in which the relation between rights and needs is described, will be introduced.

3.3.1 Rights and power

Protagonists of this theory include Thomas Hobbes (1588-1679), Baruch Spinoza (1632-1677) and David Hume (1711-1776). According to this theory, the possession of some degree of power is a prerequisite for having a right. Those without power, are obliged to obey those who have them in their power. Two questions are raised: is the possession of power to compel acquiescence part of the meaning of having a right and does the possession of such power justify the claims that can be made on others? (Wringe 1981: 23, 25).

In reply to the first question: powers are not synonymous with either legal or moral rights. For example, one may have the right to drive a car but not have the power to do so because of ill health or the lack of a car (Wringe 1981: 24).

Nor can the fact that one possesses power provide the necessary justification to assert that one has a claim to a right. A pertinent example is that of a tyrannical regime and the oppressed masses: the claim to rights may be the last resort of precisely those who lack the power to resist the despot! (Wringe 1981: 24).

Having a right implies that one is justified to exercise the right; to have the power is to be capable of exercising the right (Wringe 1981: 24).

3.3.2 Rights as correlatives of duties

To say that rights and duties are analogous is a common sentiment. A duty, however, is something that must be performed - it is, *per se*, morally obligatory, whereas a right may or may not be exercised according to preference. The acknowledgment of an obligation may well, on the other hand, signify the presence of an implicit right. Should society recognise its duty to care for the elderly and infirm, these individuals could claim that they have a right to be tended. Society may not recognise its duties of charity, but this shortcoming does not affect the correlation: the root of the dilemma rests with the inability to justify asserting particular rights (Laqueur & Rubin 1979: 5; Renteln 1990: 43; Wringe 1981: 25-27).

It is necessary to mention that there are different versions of the rights/duties theory. One such theory simply says that rights are the correlatives of duties and vice versa. According to another, it is necessary to establish whether it is the right or the duty that is primary. Certain rights could be described as privileges (to exercise the right is not wrong and does not infringe on the rights of others) for which no related duty exists (Wringe 1981: 27).

Duties and rights are certainly related. If someone can lay claim to a right, others are obliged to respect that right, but to state emphatically that rights and duties are correlatives could be an oversimplification of the facts.

3.3.3 Rights in relation to claims

It is often implied that rights are some form of claim or entitlement. This assumption can be viewed from different angles - either as *making a claim* or as *having a claim*.

Concerning the former stance, the following. By claiming something (making a claim), the request is coupled with the actual or implied assertion that one has the right to it. In this sense, the notion of a right is prior to that of a claim for one can only claim something to which one has a right. Further, "making a claim" suggests a legal connection. When compared to rights, it is found that some rights are created through legislation, but not all. From this stance, claims cannot be equated with rights (Wringe 1981: 28).

However, a closer similarity seems to exist between "having a claim" and a right. "Having a claim" suggests that one may have the option of asserting the claim or not - a similar option rests with having a right. Another point is that one cannot have a right unless it can be claimed. The relationship between claim and right seems more defensible when viewed from this perspective. Still, this argument is challenged by the contention that, in regular circumstances, it is possible to overrule a claim but not a right. The setting aside of a right, even in legitimate circumstances, constitutes an injustice. To turn down a justified claim necessarily also involves an injustice but the making of a justified claim is to initially imply that one has the right to what one is claiming. Thus it seems that claims cannot be equated with rights as rights are primary to claims (Stoljar 1984: 3; Wringe 1981: 28-29).

The three traditionally contended *rights theories* described above have recently been joined by a theory in which the relationship between rights and needs is debated.

3.3.4 Rights in relation to needs

The theory in which rights are related to needs contends that the justification for human rights should depend less on human nature and rationality and more on the idea of basic human needs and human dignity. The problem facing protagonists of this theory is to determine which needs are truly basic. Clearly, one can expect to find conflicting opinions regarding this issue (Renteln 1990: 49).

The justification or basis of the argument is that needs are intrinsic - basic to human survival - and that such intrinsic needs could be directly translated to rights. Maslow's hierarchy of needs or those identified by Gil form the basis from which the related rights are developed. Maslow (1970) outlines five "basic needs" categories: physiological, security, affiliation, esteem and self-actualisation - arranged in hierarchical order with physiological as basis (see 4: 5.3). Gil (1987) identifies the following interrelated "basic needs" necessary for human growth and development: biological-material, social-psychological, productive-creative, security, self-actualisation and spiritual (Hart 1991: 55; Wronka 1992: 24).

The recognition of human dignity, a principal concern in this theory, is not necessarily negated by other theories concerning rights. However, certain theorists and intellectuals debating the issue of rights believe that the matter of human dignity does not receive adequate acknowledgement when rights are viewed in terms of claims, powers or duties. This criticism is also to be found in debates on African perspectives of human rights.

4 HUMAN RIGHTS IN AFRICAN CONTEXT

That Africa does not share the internationally proclaimed view on human rights is evident when one considers that the **Organisation of African Unity (OAU)** established in 1963 found it necessary to draft and adopt its own charter of human rights, **The African Charter of Human and Peoples' Rights** (also known as the **Banjul Charter**) in 1981 in Nairobi (see 5: 3.2). Also to be noted are the efforts of a group of jurists, political scientists, sociologists, representatives of trade unions and political parties of various countries, as well as members of several liberation movements, who met and drafted the **Universal Declaration of the Rights of Peoples** (also known as the **Algiers Declaration**) in 1976 (Shivji 1989: 39). If Africa agreed with the principles of the United Nations **Universal Declaration of Human Rights**, would there have been any need to draft and adopt charters intended exclusively for African conditions?

Another theme that runs through arguments that petition that Africa should not be obliged to conform to the **United Nations** charter on human rights, is that it is in itself a violation of human rights to impose western human rights, norms and values that are intrinsically incompatible with African culture, on Africa. It is feared that, consequently, the human rights movement could become an instrument of cultural imperialism. It is also argued

that the large number of human rights violations prevalent on the continent of Africa can be attributed to this "impingement" on the rights of Africans (Legesse 1980: 130) to practice their culture in their unique manner.

The lack of influence and the minor role played by major non-western cultures (and in particular Africa) in the early drafting of international human rights standards have been cited as a serious deficiency in the development of a universally acceptable idea of human rights (Leary 1990: 16). The United Nations **Universal Declaration of Human Rights** (see 2: 2.6 & 2: 3.2.2) is thus perceived as an expression of western values. Those who represented the non-western countries during the drafting of the human rights standards are said to have been so influenced by their western academic training, that they were unable to argue the case from an African perspective. Can this question be justified? Indirectly it is implied that those learned scholars have no capacity for independent thought or analysis and that they are mere pawns of their western teachers (Howard 1990: 160). There is little doubt that those concerned would contest this accusation.

If one argues for a uniquely African concept of human rights, one assumes that human rights are not universal. This presupposes that African values are fundamentally at odds with western values underlying internationally codified human rights standards (Silk 1990: 308, 317). Is there any significance in entertaining the idea of human rights if they are not truly *universal*? The goal of international human rights norms is to establish a standard that disregards national sovereignty so that individuals can be protected against maltreatment (Silk 1990: 316).

Does Africa have a unique philosophical/ideological or cultural outlook that is incompatible with that of the western world? Is it possible to transcend cultural relativism and find certain equitable standards among African cultures that could be identified as the minimum standards of international human rights? It is not the task of this study to provide answers to these questions, however it could be meaningful to bear them in mind should one be asked to reflect on the validity of an argument for a uniquely African charter on human rights. A brief description of the background of the African idea of human rights could provide some clues to answers for these questions.

4.1 Traditional African views on human rights

A philosophy and perception of human rights has existed among African cultures although western conceptions may not have parallels in the traditional African concept of human rights (Shivji 1989: 10; Silk 1990: 303; Welch 1984: 11).

Western views are based on the rights of the autonomous individual; the individual who is both the unit of organised society as well as a primary holder of rights. This idea is foreign to African understanding. In traditional Africa, the individual is not recognised outside his community and culture. Collective or communal rights within social context are emphasised. One who loses his membership in a social unit or one who does not belong, lives outside the range of human rights protection of the social unit. Group membership is crucial to the recognition of the dignity and rights of the individual. This view suggests that individuals in traditional African society are oriented towards their communal obligations rather than their individual rights - obligations are the organising principle of kinship and family relationships (Shivji 1989: 12, 22-23; Silk 1990: 311; Welch 1984: 15-16).

Traditional African societies recognise six major sets of rights: the right to life, education, freedom of movement, justice, work and the right to participate in the benefits and decision making of the community. All these rights exist within collective contexts (Welch 1984: 16). The endurance of these rights is guaranteed by the fact that they represent some of the basic elements that hold society together and are rights that have been recognised by most traditional societies as fundamental human rights (Marasinghe 1984: 33).

Human rights in African context is based on the principle of human dignity. Bassam Tibi cited in An-Na'im and Deng (1990: 3) notes *Non-westerners tend to confuse human rights with human dignity. If one is talking about the latter, there is no doubt that fully developed notions of human dignity exist in many non-western cultures.* He adds that medieval Europe itself had no inkling of human rights in the modern sense. If one concedes that African societies base rights and obligations on traditional religious, moral and cultural values associated with human dignity, then, although the context and enforcement procedures are different from those of the west, these societies may well be achieving the aspirations of international human rights standards (An-Na'im & Deng 1990: 3).

In traditional African society, the context of family, clan and ethnic solidarity provided the framework within which individuals exercised their economic, political and social liberties and duties. When large portions of Africa were subjected to external rule (colonialism), Africans, to a large extent, lost the capacity to define and control their traditional rights. Consequently, conflicts were to emerge between indigenous and European conceptions.

4.2 The legacy of colonialism

A basic difference between the European and African view on rights and their application lies in the fact that Europeans stress individual protection - the rights of persons and governments - while the latter focuses on collective rights - kinship roles and social groups (Welch 1984: 16; see 2: 4.1).

European colonisers changed many existing indigenous practices. In practice, European codes were introduced and widely applied in urban areas, while traditional legal precepts were incompletely codified and relegated to an inferior position in civil law in mainly rural areas. Widespread confusion over applicable standards resulted. Dual legal systems with areas that overlapped were created. When collective and individual expression on the issue of rights came into conflict, the values of the colonising power were presumed to be superior to those indigenous to African societies with the result that indigenous institutions became less effective in dictating to the rights and duties of their members (Silk 1990: 293; Welch 1984: 7, 14-15).

4.3 Concluding remarks

Western perspectives on the development of international human rights standards have reflected the primacy of the individual and social inequalities have received little attention - the rights of entire social groups such as slaves and women, have invariably been neglected. In contrast, the African view has placed groups and social issues first (Leary 1990: 18).

Certain myths regarding the Utopian nature of Africa before the coming of colonialism, need to be explored. It would be myopic to assume that African societies have faithfully and impartially protected the rights of all their members throughout time. Stratification

within the traditional community was (and is) common and certain groups were and still are routinely discriminated against: it was customary that women and twins enjoyed lower social status - it was quite normal for the latter to be killed shortly after being delivered (Silk 1990: 312-313). Nor did roles and responsibilities remain static in traditional Africa. Occurrences like migration, the ingression of new ideas and foreign religions and clashes between rival communities influenced the opinions of those concerned (Welch 1984: 15). The cardinal importance of the communal nature of African society seems overemphasised - one should not lose sight of that fact that groups could not exist without individuals. Basic human rights of individuals need to be protected - it is individuals who are murdered, face discrimination, torture, enslavement and the other atrocities humans wield against each other (Silk 1990: 320).

Social change is taking place in Africa. Burgeoning populations, urbanisation and the reliance on nonagricultural employment engender an increasing trend towards individualism (Howard 1990: 164). Marasinghe (1984: 32) remarks: *The best guarantees of human rights in Africa are to be found by preserving conceptions of human rights recognised by each society's law and custom.* The task is not to look at African traditional society for inconsistencies in relation to human rights but rather to identify those human rights values inherent in African traditional society.

Schwartz in his essay *Human rights in an evolving world culture* (1990: 382) comments: *Every culture will have its distinctive ways of formulating and supporting human rights. Every society can learn from other societies more effective ways to implement human rights. While honouring the diversity of cultures, we can also build towards common principles that all can support. As agreement is reached on the substance, we may begin to trust international law to provide a salutary and acceptable safeguard to ensure that all people can count on a minimum standard of human rights.*

The major part of this chapter so far has been devoted to tracing the development of the idea of human rights as well as explaining the theoretical ramifications of the concept. There appears no need to discuss this issue further. Attention will now be focused on the historical themes associated with the changing conceptualisation of the child. The latter issue has been extensively researched in the past and a great deal of reputable material on the topic is readily available. Consequently, only those events and trends that are of salient relevance will be highlighted. (The changing view of the child and its relation to children's rights movements will be discussed at greater length in Chapter 3 of this dissertation.)

5 CHILDREN'S RIGHTS: A HISTORICAL AND PHILOSOPHICAL OVERVIEW

We are living in an age in which a children's rights culture is detectable, but children have needed to wait for centuries to experience this change in attitude - and possible even now, those who need sympathy and nurturance most, have yet to be reached. Two major social developments have influenced the emergence of this particular disposition towards children: the development of the idea and political reality of human rights and the reconstruction of the idea of childhood and the consequent acknowledgement that children too are human. These series of events have culminated in the establishment of the United Nations **Convention on the Rights of the Child** (Hart & Pavlovic 1991: 345) and a new era in the history of childhood has commenced.

5.1 Historical themes in the conceptualisation of the child: the social status of the child

In essence, the child's status changed from that of property to person. Before the sixteenth century the child had been regarded as a miniature adult - his father had unlimited power over him, his living conditions were atrocious, the child mortality rate was excessively high, and in general children were subjected *inter alia* to neglect, abuse and, abandonment. Towards the eighteenth century social conditions started to improve and consequently, those of the children as well. The middle-class and conjugal family were established and later, as society developed heightened interest in children, parents were expected to maintain, educate and protect their offspring. Nonetheless, parents still had free reign in rearing their children (Hart & Pavlovic 1991: 345-346).

A notable breakthrough in recognising the *person* status of children is an event that took place in the United States of America. In 1967, Justice Fortas - in passing a decision in the Supreme Court in the case *re Gault* - affirmed the constitutional standing of children. He declared that *neither the Fourteenth Amendment nor the Bill of Rights is for adults alone*. Two years later in the case *Tinker v. Des Moines School District*, the court noted that *Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess Constitutional Rights* (Stier 1978: 42).

But, what benefit does the child derive from being awarded person status? Person status invokes respect for the individual's inherent value, his dignity, his subjective state and fundamental sovereignty. It establishes his right to self-determination - and it is here that formal education has a major role to play (Hart & Pavlovic 1991: 349).

5.2 Historical themes in the conceptualisation of the child: schools, education and early legislation

Children during the late Middle Ages and Renaissance - while still being treated rather as property than persons and whose major worth lay in their ability to contribute in the work unit - were considered either "inherently evil" and in need of separate moulding, or "innocent" and thus in need of separate protection from corrupted society. The school seemed to provide the answer to both these needs (Hart & Pavlovic 1991: 346).

Schools of particular eras characteristically follow common goals. Three encompassing views regarding these goals can generally be distinguished: the preservation of the past and the *status quo* of society, the assurance of commitment to and pursuit of common values to achieve a desired future society, or the preparation of a citizenry capable of determining and directing its own future. Education that is directed towards a particular aim, simultaneously presupposes a particular view of the child. This view concurrently decides which rights are bestowed on the child (Hart & Pavlovic 1991: 349).

Initially, schooling was not compulsory and legislation in this regard was nonexistent, in truth, children were scarcely recognised as being in need of any legal provision or protection at all. One of the earliest laws was the so-called *Stubborn Child Law* of 1646 (see 3: 4.1) that aimed at controlling and reprimanding difficult children - certainly neither protecting them nor their rights! The late 1800s heralded a new era for the child. Considered to be endangered by the vices of industrialisation - such as urban living, poverty and exploitation - the child was protected from such evils by legislation. The child was considered a resource to society and was thus entitled to protection. Of the most noteworthy events was the passing of child-labour and compulsory school attendance laws in industrialised Europe and America. Not only was the child protected through state legislation, but as children became the focus of social reform, society also recognised its obligation to protect the child. To meet this responsibility, refuge and reform institutions were founded by social establishments (Hart & Pavlovic 1991: 347-350; Takanishi 1978:

It has been said that it was Rousseau's assumption of the inherent rectitude of the child that acted as a catalyst in initiating the child-saving campaigns of the late nineteenth century social reform era (Borstelman cited in Takanishi 1978: 11). The state increasingly assumed the role of parent substitute (*parens patriae*) and the juvenile court was established to mediate in cases of *inter alia* abuse, neglect and delinquency (Hart & Pavlovic 1991: 346). Although not explicitly expressed, the state recognised that children do have rights that needed to be protected. Yet, in reality, as late as the beginning of the twentieth century, children both internationally and locally were for the most part regarded as extensions of their parents with no legal status as such. A common legal and social assumption that persists is that the interests of a child are identical to those of his parents (Eckard 1993; Rogers & Wrightsman 1978: 60; see 1: 1) and that there is subsequently no necessity to identify or grant individual and particular rights to children.

One might wonder why the recognition of children's rights has been such a protracted affair. This can be explained by referring to a particular rights theory - the relationship between rights and power (see 2: 3.3.1). Seen in this context, it becomes clear why children were one of the last social groups whose rights were to be defended. Their social power was insufficient for them to pursue their own struggle for rights; they were dependent on adults to defend and advocate for the recognition of their rights (Hart & Pavlovic 1991: 347). Perhaps, adults would only assume this responsibility once they themselves had been assured of their own status, dignity and rights.

5.3 The human rights movement extends to children

During the twentieth century, the idea of human rights that had previously been concerned with adults only, was extended to children (see 2: 2.6). In the initial stages, children's rights considerations focused on protection and nurturance and did not acknowledge the child's right to self-determination; the early efforts addressed those issues that were of the greatest concern at that time. Later during the second half of the century, in America, rights to due process in courts and schools were established (Hart & Pavlovic 1991: 346; see 2: 5.1) and a climate conducive to acknowledging the child's right to self-determination or participation in matters affecting his welfare was established. The child's right to self-determination was for the first time internationally and officially sanctioned in the United

Nations **Convention on the Rights of the Child** (1989). In this document (the recurrent themes of which are discussed in Chapter 4 of this dissertation) the person status of the child is recognised as paramount and consequently the child's right to participation and autonomy is foremost (see **Appendix 1**: preamble).

5.4 The relationship between self-determination and autonomy

When a child's self-determination rights are considered, the autonomy of the child becomes a regulating issue. A child's progress towards person status has largely been influenced by the degree to which children are considered to be like adults - in being dependable, responsible, having good judgment and being capable of directing their own development. The argument is that autonomy is not exclusively determined by chronological age and that a balance must be sought between the child's developmental progress and his capacity to responsibly execute rights. To develop his autonomy, the child needs to increasingly participate in decision-making processes (Worsfold 1974: 156; Wringle 1981: 88-89). As Freeman (1992a) remarks, *individual autonomy depends not on actual autonomy, but on the capacity for it.*

5.5 Universal organisations that address children's rights issues

The first attempt to consolidate the basic rights of children was in 1924. This document, the **Geneva Declaration on the Rights of the Child**, drafted and adopted by the **League of Nations**, led to the drafting of the **Declaration of the Rights of the Child** by the United Nations in 1959. Ten rights were detailed in this declaration - rights that protected the child from discrimination, exploitation and guaranteed physical, intellectual and emotional care (McCurdie 1992: 6-7).

During 1979 - the year commemorated as the **International Year of the Child** - the **United Nations Commission on Human Rights** started work on the drafting of a document in which the rights of the child would be explicitly detailed. This project was undertaken on the initiative of Poland. Ten years later, on 20 November 1989, the international community extended the mantle of human rights protection to one of its most vulnerable and disenfranchised groups in society - children - with the adoption by the General Assembly of Resolution 44/25 of the United Nations **Convention on the Rights**

of the Child (United Nations 1991: 1-2; Takanishi 1978: 24).

Because many African countries had not participated in writing the convention, members of the **Organisation for African Unity** decided to draft an **African Charter on the Rights and Welfare of the Child** to deal with issues that apply particularly to children in Africa. These issues include female circumcision, unequal treatment and the inferior status of the female child and the role of relatives in adoption or fostering (McCurdie 1992: 8).

In South Africa, children at the Children's Summit held in Cape Town in June 1992 drafted the **Children's Charter of South Africa** (see 1: 1.1). The summit was linked to the **International Conference on the Rights of the Child** held in June 1992 as a follow-up to the conference on **Children, Repression and the Law in Apartheid South Africa** that had been held in Harare, Zimbabwe, in 1987 (McCurdie 1992: 9).

Further developments in the South African and international arena of children's rights will be discussed at length in Chapters 4 and 5.

5.6 Do children really "need" to have their rights recognised and protected?

One would like to believe that we live in a child-orientated society and that all a child needs is the loving care and attention of his affectionate and devoted parents. His parents always have his "best interests" at heart and he grows up to be a congenial adult who will one day also be a dutiful and attentive parent to his own children. This, one might like to imagine, is the typical prospect facing children worldwide. In reality, nothing could be further from the truth. Freeman (1992a: 30) also criticises similar views saying *It is somewhat unfortunate that in an age when so much abuse is being uncovered that governments and writers should cling to the 'cereal packet' image of the family.*

Another myth that Freeman (1992a: 31) lays to rest is that childhood is a 'golden age'. He cites countries where children are being exterminated as if they were vermin - Brazil and Guatemala serve as examples - and reminds us that poverty, disease, and exploitation of children are a worldwide occurrence.

It is certainly not an ideal world for children. They are particularly vulnerable and need to have their integrity and dignity protected. True, if children are awarded rights, it would entitle them to make legitimate claims, challenge authority and complain about their treatment and this could lead to further conflict between children and the adult community [Freeman 1992b: 55].

At this stage it is inappropriate to argue either in favour of, or against children's rights. Perhaps all that should be said lies in the words [cited in Burgess 1979: 126] of the late Gabriela Mistral, a Chilean poet: *We are all guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer "tomorrow". His name is today.*

6 CONCLUSION

Discussion on rights invariably rouses diverse opinions. Because the term *rights* is emotive, it could be suggested that it be replaced with the term *interests*. These *interests* however, are not the mere desire to seek pleasure or to satisfy superficial whims but comprise the concerns, plans, projects and states of mind without which our lives would lose much of its meaning. In other words these *interests* are what make human life more fully human; an ability to protect at least some of these *interests* is at the heart of civilisation itself [Wolfson 1992: 8].

Some argue that it is not rights and their exercising that should govern our behaviour and attitudes, but altruism. It is claimed that the exercising of rights is only necessary when moral relations have broken down. True enough, yet it is harsh reality that we face daily, and without a culture of rights there would be no moral "bottom-line" [Wolfson 1992: 9]. A world without a rights culture would be a world where members of the community had no guarantee of even minimal decent treatment and no power or basis to redress legitimate grievances [Wolfson 1992: 10]. An infallible scheme or theory of rights may be unobtainable, but through continued effort a fundamental framework for universal rights might still be found.

In the next chapter, the efforts of the children's advocates - the "child savers" and the "child liberators" - to negotiate adequate living circumstances for the younger members of society, will be described.

**THE EVOLUTION OF CHILDREN'S RIGHTS
MOVEMENTS**

Nature wants children to be children before they are men.

(Boutet de Monvel)

CHAPTER 3

THE EVOLUTION OF CHILDREN'S RIGHTS MOVEMENTS

1 INTRODUCTION

In the previous chapter, the progression of and changes in the perception of the concept "rights" were outlined. The focus of the study fell on circumstances and events in three countries - England, America and France - where a culture conducive to acknowledging and upholding human rights had come into existence. It will be remembered that these conditions had been brought about by social reform activities initiated by the common people who, hoping to improve their plight, aspired to secure just and fair treatment for all by all. Given that society in these countries had been sensitised to the plight of the exploited, abused and neglected, it seems a logical progression to use these countries as exemplars in which to study the course of the establishment of children's rights.

The idea of human rights which had been widely disseminated in England, America and France later influenced debates about slavery, black people and women (Walvin 1984: 45). The use of human rights principles to improve the conditions of children was somewhat delayed, and has only recently been given prominence. The words of Hannah More, (1745-1833), a renowned children's author, co-establisher of the **Sunday School Movement** (see 3: 3.4) and counter-revolutionist, point to the inferior position afforded to the child of those times. In denouncing the popular trend of supporting human rights, she had the following to say: *It follows, according to the actual progression of human beings, that the next influx of that irradiation which our enlighteners are pouring on us, will illuminate the world with the grave descants on the rights of youth, the rights of children, the rights of babies* [cited in Walvin: 45: 1984].

In this chapter the period of the social and industrial revolutions [characterised by remarkable social development and transformation] cited in the previous chapter will be focused on. It is this very feature of growth and change which constitutes a major problem when a logical or sequential analysis or account of any social construct of that period is attempted - the vast number of variables and factors influencing the presentation of

information deter straightforward interpretation and presentation. The reconstruction of any social event or construct - including childhood - portrays a blend of societal, cultural, religious, political and philanthropic influences. In other words, childhood cannot be decontextualised. In this chapter where the view and nature of childhood are to be discussed as a framework for a description of the development of children's rights movements, it was decided to identify the various social roles children performed and to focus on the circumstances, interaction of social determinants and activities of children as they acted out these roles.

It is not the intention of this dissertation to analyse, clarify or debate the social construct *childhood*. However, as the concept forms an underlying theme of this chapter, the following features of childhood need to be included to assist in the contextualisation and conceptualisation of childhood as a social construct.

2 CHILDHOOD AS A SOCIAL CONSTRUCT

It has been suggested that the idea of childhood is an invention of the past four hundred years and that the word 'child' was initially used to express *kinship* rather than an age state (Plumb 1972: 153). Both Aries and De Mause have presented a great deal of work in relation to children and the family in history. Aries (1962: 33-128) contends that childhood is a *recent discovery* while De Mause (1974: 1-54) advances the notion of childhood as a universal construct although early child rearing practices - he concedes - were characteristically brutal and exploitive and bear little resemblance to current practices. La Fontaine (1979: 1) argues that although the immaturity of children is a biological fact, the ways in which this immaturity is understood and made meaningful is a fact of culture. From these views it follows that the construct "childhood" is open to diverse interpretation in temporal, cultural and social representation.

James and Prout (1990) identify a number of key features of childhood as a social paradigm which could be useful guidelines in interpreting and understanding a study of childhood in time and place. In advancing the idea of a cultural interpretation of childhood, they argue that a western conceptualisation of childhood for all children which effectively conceals and ignores the fact that the institution of childhood is a social construction is steadily being imposed. This line of thought could prove interesting when a study of the

child in Africa is undertaken (see Chapter 5). Among the features referred to are the following (James & Prout 1990: 8-9):

- Childhood is a social construction - it provides an interpretive frame of contextualising the early years of human life. Childhood, as distinct from biological immaturity, is neither a natural nor universal feature of human groups but appears as a specific structural and cultural component of many societies.
- Childhood is a variable of social analysis which cannot be entirely divorced from other variables such as class, gender or ethnicity. Comparative and cross-cultural analysis reveals a variety of childhoods rather than a single and universal phenomenon.
- Children are active in the construction and determination of their own social lives, the lives of those around them and of the societies in which they live.

The remainder of this chapter will be devoted to reviewing the status and role of children in the three countries; England, America and France. It could prove enlightening to bear the features of childhood as suggested by James and Prout in mind and to be sensitive to the extent to which *inter alia* social class, ethnicity and gender have featured in the conceptualisation and contextualisation of childhood by the three countries mentioned above.

3 A REVIEW OF THE STATUS AND ROLE OF CHILDREN IN ENGLAND: THE EIGHTEENTH TO THE EARLY TWENTIETH CENTURY

British society was characterised by three social classes: the aristocracy, the middle-class and the working-class. Although the circumstances of and attitude towards children in general will be traced, the focus of this investigation falls on the children of the working-class. Children from the other classes were generally more fortunate in terms of the treatment they could expect from their parents and the arrangements made for their education.

3.1 The familial, social and legal status of the child

For many centuries, children were legally the property of their parents and were used by them as personal or family assets. The result was that among the poor, the labour of children was exploited; among the rich, their marriages were contrived - all to the economic or social advantage of the parents (Pinchbeck & Hewitt 1973: 348). The exploitive activities of parents and later the factory owners were common knowledge and the combined indifference both of parents and of the community to the suffering of children was an obstacle which needed to be overcome by those advocating the child's legal right to demand protection from such exploitation. During the nineteenth century much was done to improve the circumstances of young children employed in industry and to protect children from physical neglect and cruelty inflicted by parents, employers and society at large (Pinchbeck & Hewitt 1973: 355; Rose 1991: 233).

Common law traditionally upheld the near-absolute authority of a parent over a child - for example, the right to chastisement was held inviolable save only to manslaughter and murder. In addition, common law recognised no liability for neglect or desertion by a parent and it was only late in the nineteenth century that courts came round to viewing wilful neglect as chargeable (Rose 1991: 233). Although parents were under a moral obligation to support and educate their children, there was no power to enforce these duties. William Blackstone (1723-1780), Justice of the Court of Common Pleas (1770-1780) referring to the parent's duty and power stated: *The power of the parent over the child is derived from ... their duty; this authority being given them partly to enable the parent the more effectively to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it* (cited in Abbot 1938: 13-14). The duties he referred to were the duty of maintenance - a principle of natural law since the parents had brought the child into the world; the duty of protection - also a natural law; and the duty of providing an education suitable to the child's station in life - a logical duty. Existing legislation was inadequate to ensure that parents fulfilled these obligations. Lord Chancellor Eldon in 1827 pointed out: *The courts of law can enforce the rights of the father, but they are not equal to enforcing the duties of the father* (cited in Abbot 1938: 22).

Differentiation based on age, customarily acknowledged by contemporary society, did not exist for the majority of the population in those days. The prosperous classes were able to shield their children from the squalor and the world at large (although these young people

were not beyond the manipulative and exploitive endeavours of their parents, they did enjoy a semblance of childhood as understood today) but among the less fortunate, childhood *per se* was non-existent. The only distinction between children and adults was that the infant required physical care, apart from this, the child enjoyed similar status and treatment as the adult. This lack of differentiation is reflected in all spheres of social and economic life where children mingled freely with adults in work, leisure and play. They dressed the same, followed the same habits and adhered to a similar moral code (Muncie 1984: 29; Walvin 1984: 15).

Among the working-class, child labour was both universal and an economic necessity. However, children were not solely a source of labour, they were also commodities to be exploited in any way that would secure material gain. Common professions for children included begging, prostitution and chimney sweeping. The cruelty these children were exposed to was considerable. It was not unusual for children used as beggars to have their eyes put out or to be maimed in other ways to excite the pity of passers-by. These atrocities were devised by members of a society totally indifferent to the welfare of the child (Pinchbeck & Hewitt 1973: 350).

Renowned educationists such as Locke (1632-1704) and Rousseau (1712-1778), poets like William Blake (1757-1827) and Charles Lamb (1775-1834) and religious leaders like John Wesley (1703-1791) were to reflect and influence society's attitude toward children. As the contributions of Locke and Rousseau are well-known, a brief reference to Wesley's and the poets' views on the nature of the child could prove interesting. Wesley revived the Calvinist belief that emphasised the depravity rather than the innocence of infancy. Parents were obliged to control and restrain their children and children who were not industrious were viewed as lacking in moral and social discipline (Muncie 1984: 32). In their poetry, both Blake and Lamb referred to the sorry plight of children. However, the message conveyed was that it remained the duty of the neglected and mistreated to resign themselves to their station in life. This view that everyone had a particular position in society, and that for some that place could be unpleasant, was supported by religious tenets. It was this climate of social complacency and resignation that inhibited those who strove to legislate against children being exploited, cruelly mistreated and corrupted (Pinchbeck & Hewitt 1973: 355-357).

The harshness of parents and society was paralleled by the harshness of the state. According to law and custom, children older than 7 enjoyed adult status and were

consequently liable for the same punishment. It was common to find children being hanged - a 12 year old boy for burglary, transported (transportation of "delinquent" children legalised by the 1717 *Piracy Act* (4 Geo.1) c. 11 which formed the basis of the *Transportation Act* of 1718) - a 10 year old girl for stealing a shawl and a petticoat, or suffering corporal punishment and imprisonment in places so appalling that death was virtually inevitable (Muncie 1984: 33; Pinchbeck & Hewitt 1973: 351-352). The total disregard with which children were treated is pitifully illustrated by the attitude towards child-stealing: in terms of the law such theft constituted a crime only if the child had been clothed for the person could then be convicted of stealing the clothes (Pinchbeck & Hewitt 1973: 360). Before the late nineteenth century criminal law made no distinction between children and other offenders (Walvin 1984: 159). In 1889 the *Prevention of Cruelty to, and Protection of, Children Act* (52 & 53 Vict.) c. 44 ensured legal protection for the welfare of children - especially in terms of imprisonment - while the 1908 *Children's Act* (8 Edw. 7) c. 67 consolidated efforts to secure the legal status and rights of the child (Walvin 1984: 159-167; see 3: 3.3 & 3: 3.4). For the first time, children were being regarded as human beings worthy of protection and nurturance.

The manner in which the child in British society actively fulfilled his perceived duties and used those opportunities which life bestowed on him will be examined in the section that follows.

3.2 Industry: the embodiment of childhood

Childhood in the eighteenth and nineteenth centuries is probably best understood when described in terms of the child's daily toil - the essence of his existence and worth (see 3: 3.1). Children were a vital source of family income and were set to work as soon as they were physically able (Muncie: 1984: 30). Children's earnings were used to supplement the family income because the wages of adults were low (Walvin 1984: 195). Employers found it profitable to use child labour - children charged little, were quick and nimble, and ate and complained less than adults (Gray 1967: 102). These benefits explain why children were to constitute a significant portion of the labour market for a long time.

Before the industrial revolution, working-class children were widely employed in agriculture and domestic production (Rose 1991: 3). The nature of children's rural work varied depending on locale and on the crops; children might work alone, with their families

and even with labouring gangs. Rural work was strenuous and children as young as 4 or 5 would be put to work (Pinchbeck & Hewitt 1973: 392, 394; Walvin 1984:72).

Invariably it is the "unscrupulous" factory owner who is derided for exploiting and abusing his young labourers, but much of the worst exploitation took place in small workshops - the cottage industries - at the hands of the children's own parents. Because these small workshops were inconspicuous in comparison to the factory industry, they did not draw much attention to themselves. The working conditions of children employed in these industries were deplorable. The children were expected to work in cramped, unsanitary, damp and dimly lit hovels. Many industries carried occupational hazards which affected the health of children - varnishes, fur, fluff and steam - and respiratory and eye disorders were common. Generally, the child would receive a minimal wage or possibly no wage at all. The working hours were inhuman and children were easily expected to work twelve hours a day. The combination of miserable working conditions, a meagre diet, cramped posture, late nights and exhaustion stunted the children's growth and made them susceptible to disease. Under these circumstances little thought was given to these children's schooling (Rose 1991: 8, 19-28).

The factories of the early nineteenth century created a great demand for child labour as the new industrial techniques and the restricted confines of the workplace required small bodies and nimble hands which could perform tasks impossible for adults (Rose 1991: 3; Walvin 1984: 62). The working conditions to which children were subjected were insufferable. Children were underpaid, physically and sexually abused and exposed to all manner of exploitation. Perhaps it was because there were so many children employed in the factories that society reached a point where for once it could not placate its conscience and ignore the atrocities perpetrated against children any longer. The urge to protect the welfare of children resulted in successive commissions of enquiry being undertaken from the early nineteenth century onwards. After the 1819 *Factory Act* (59 Geo. 3) c. 66 (also known as the *Cotton Mills Act*), children under the age of 9 could no longer be employed in textile mills or factories. Under the 1833 *Factory Act* (3 & 4 Will. 4) c. 103, children between 9 and 13 were required to have two hours' schooling each day. Of course there were many avaricious parents and employers who contravened these regulations, but the principle of safeguarding the welfare of the child had been established (Pinchbeck & Hewitt 1973: 403-405).

When the employment of children in mines and collieries is investigated, evidence of horrifying conditions is found. Children and women were chained, belted and harnessed like dogs and were expected to drag heavy loads of coal along the dark and narrow tunnels. Shifts of up to thirty-six hours at a time were worked and injuries from roof falls or wagons rolling out of control were frequent. Under these appalling conditions industrial diseases of the lungs and skin were common. The 1848 *Mine Act* (details of the act could not be obtained) was however to ban all females and boys under 10 from underground work while the 1860 *Mine Act* (23 & 24 Vict.) c. 151 stipulated that employers provide part-time schooling for 10 to 12 year olds underground workers.

However, not all children were able to find employment in organised industry and many were left to fend for themselves on the streets. The most common occupation was that of hawking. Young street vendors who sold practically anything under the sun also performed a myriad other tasks like running errands, holding horses, sweeping crossings or calling for cabs. Working hours were long and the lives of these children were precarious and harsh. Criminal and delinquent behaviour became commonplace (Pinchbeck & Hewitt 1973: 668; Walvin 1984: 150-151).

A succinct assessment of the child in industry reveals two basic features: the welfare and esteem of the child as a distinct human being was of little concern and there was an apparent apathy and disregard concerning his education. It is these aspects - the child's vulnerability and education - which will be considered next.

3.3 The care of destitute and neglected children

It is difficult to understand how society could be so insensitive to the vulnerability of children and be guilty of the exploitive behaviour outlined above. Explanations which could be offered are the prevailing social climate of complacency and resignation to one's lot in life (see 3: 3.1) and the fact that children were so numerous that they had little "scarcity" value (Pinchbeck & Hewitt 1973: 388).

Children, as mentioned, were exploited by their parents, factory owners and employers (see 3: 3.1 & 3: 3.2). Legally they were their parents' possessions to be used and disposed of at will and in the view of the state children had no rights. Cruelty and neglect were rampant. Baby farming in the nineteenth century produced some of the most appalling examples of

cruelty to children - perhaps some of the most extreme of the cruelties tolerated by society (Walvin 1984: 162). In the late 1800s numerous voluntary efforts were made to curtail cruelty to children. **A Parliamentary Committee on the Protection of Infant Life** (1871) investigated the atrocities of baby-farming and the immediate upshot of the revelations was the *Infant Life Protection Act* of 1872 (35 & 36 Vict.) c. 38 which required that all foster mothers register with local authorities and that inquiries be carried out on the deaths of infants. The **Society for the Prevention of Cruelty to Animals**, (SPCA), which had been formed in 1824 in America ironically served as a forerunner to the establishment of similar institutions for the protection of children (see 3: 4.3). The first of such institutions was the **Liverpool Society for the Prevention of Cruelty to Children** founded in 1883. A proliferation of local and national societies for preventing cruelty to children were established and in 1889 *The Prevention of Cruelty to, and Protection of, Children Act* (52 & 53 Vict.) c. 44 was passed (Rose 1991: 236; Walvin 1984: 162; see 3: 3.1).

This act was significant in a number of ways. First, it sought to prevent cruelty to children and to outlaw excessive working hours in occupations that were not covered by the existing factory acts. Secondly, it coordinated local initiatives against cruelty to children and sought to punish the offending adults. Police and magistrates were given the power to intervene in domestic circumstances and to remove children from homes where child abuse was suspected (Walvin 1984: 162-163). Although these reform activities were imperative and were generally welcomed, many felt that the state was infringing on the rights of the parents and that family stability would suffer as a result of such intervention (Pinchbeck & Hewitt 1973: 358). These early efforts were to culminate in the drafting of the *Children's Act* (8 Edw. 7) c. 67. of 1908 - an act which also became known as the *Children's Charter*. For many years philanthropists and concerned individuals had strived for the recognition of the child as a worthy individual, and gradually, possibly caused by the prevailing climate of humanitarianism, social conscience was awakened. Perhaps the Lord Advocate's comment during the second reading of the Bill in 1908 sums this up best: *There was a time in the history of this House when a Bill of this kind would have been treated as a most revolutionary measure; and, half a century ago, if such a measure had been introduced it would have been said that the British Constitution was being undermined. Now a Bill of this kind finds itself in smooth water from the outset. This measure is not the development of the political ideas of one party, but the gradual development of a quickened sense on the part of the community at large of the duty it owes to the children* (cited in Pinchbeck & Hewitt 1973: 612).

As mentioned previously, initially, the law did not discriminate between youthful and adult criminals and delinquents (see 3: 3.1). Just as the efforts of voluntary organisations initialised the first institutional provision for brutalised and neglected children, so too a voluntary enterprise, the **Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis** established in 1815, investigated the plight of juvenile offenders. Horrified by the severity of the penal code and its application to children, this organisation aimed to reform the law regarding juvenile crime and to establish institutions to reform and not merely punish delinquent youth (Muncie 1984: 32-34; Pinchbeck & Hewitt 1973: 431-436).

The measures alluded to above were to herald an era of reform and rehabilitation through schooling.

3.4 Schooling and the rehabilitation of deviant children

A detailed commentary on the development of education in Britain during the period under review is beyond the scope of this dissertation and therefore, only the most significant aspects will be referred to.

The working-class tended to view education more as an imposition than an asset. Compulsory school attendance would obviously have protected the child from economic exploitation as the child would be withdrawn from the labour market, but parents were more concerned about the consequent loss of income from the child's earnings than this would bring about than the child's physical, emotional and intellectual wellbeing (Pinchbeck & Hewitt 1973: 358). A more philosophical debate focused on the covert motives of those providing organised schooling. It was feared that compulsory and organised education would threaten social order and that middle-class values and attributes like punctuality and the value of industry would be indiscriminately imposed on pupils (Walvin 1984: 114). Nonetheless, no civilised society, however simple, has yet eliminated education from its social activities and schooling and training in one form or another, was also part of the British social web.

Education was often the subsidiary interest of schools established in this period. From the charity schools, the spinning schools, the workhouses to the factory schools a policy of wage-labour was assumed. Indeed, it could be argued somewhat altruistically that the

needy child was being trained in a trade that would help him improve his station in life and encourage him to be self-supportive. However, the underlying motive remained the acquisition of cheap labour (Pinchbeck & Hewitt 1973: 418).

Towards the end of the eighteenth century, charity schools were offering training opportunities for poor children. These schools were the special concern of a voluntary religious association, the **Society for the Promotion of Christian Knowledge** established in 1698/9 by members of the Church of England. Instruction was religious and doctrinal. From an early stage however (1712) these schools developed into working schools in an attempt to appease parents who grudged the time their children spent at school. These schools contributed to the provision of education for the poor but were soon to be superseded by the monitorial school system used in schools founded by Joseph Lancaster (of the non-denominational **Lancastrian Society** (1808) later to become the **British and Foreign School Society**) and Andrew Bell (later of the Church of England's **National Society for Promoting the Education of the Poor in the Principles of the Established Church** [1811]). These schools, the **British and National Schools** established in 1798, were seen to be able to handle more children more cheaply (Gray 1967: 106-114; Lawson & Silver 1973: 238-242; Walvin 1984: 114).

The education of children in industrial and urbanised settlements was provided for according to a model scheme established by Robert Owen in the early nineteenth century. He believed that children attending factory schools ought to be governed with kindness and believed that agreeable ways of punishment could be sought. These meritorious efforts were not the only attempt to provide schools for factory children in this period. Two early *Factory Acts* in 1802 ([42 Geo. 3] c. 73) and 1819 ([59 Geo. 3] c. 66) (see 3: 3.2) required that child labourers be educated, but legislation which ensured the implementation of these requirements only came into force in the 1830s. The *Factory Acts* from 1833 ([3 & 4 Will. 4] c. 103) (see 3: 3.2) onwards reduced children's working hours, forbade the employment of children under a certain age and made part-time schooling compulsory for children working in factories. These schools were one of the chief methods through which working-class children received a basic education and the system persisted until the *Education Act* (8 & 9 Geo. 5) c. 39 of 1918 ended the half-time system (Lawson & Silver 1973: 249, 273-274, 384; Walvin 1984: 114-116).

Robert Raikes, a churchman and the editor of the *Gloucester Journal* (which he used *inter alia* to promote philanthropic undertakings), has been ennobled with the title of founder

of the **Sunday School**. There are several accounts of earlier schools in this tradition but the first permanent institutions are those established by Raikes during the 1780s. Other notable names associated with the **Sunday School** movement are the Ferrar sisters, the children's author Hannah More (see 3: 1) and the avid follower of John Wesley, Hannah Ball. Initially the movement had an undenominational character, but the schools shortly became affiliated with denominational churches. These schools worked against great constraints to provide their students with a semblance of education - they held the children for but a few hours once a week and attendance was erratic due to the dismal living conditions of these pupils [Gray 1967: 118-123; Lawson & Silver 1973: 239; Walvin 1984: 46, 182].

The *General Workhouse Act* [9 Geo. 1] c. 7 (also known as the *Poor Relief Act*) of 1722 gave great impetus to the erection of workhouses for the poor. Schooling provided by these institutions consisted not only of literary instruction but also of teaching children an occupation. The wages earned from spinning, weaving and other skills were insufficient to sustain the institutions and they consequently came to rely on collections resulting from charity sermons preached and freewill gifts or bequests to finance these establishments. However, workhouse training was described in the report of the 1832-4 **Poor Law Commission** as *training in idleness, ignorance and vice*. Children had difficulty in finding respectable employment once they left the workhouse and the majority dropped into the ranks of pauperism and crime. The atmosphere in these schools was unappealing and during the last decades of the 1800s, attempts were made to make the surroundings more congenial. Children were housed in cottage homes rather than the drab institutions and some were even boarded out. However, the success of these schools is generally disputed [Gray 1967: 114-116; Lawson & Silver 1973: 188; Walvin 1984: 116-117].

In the instances described above, the provision of the educational needs of the deprived or poor were outlined. Yet there were those - the destitute bands of children who lived on the streets - who were denied even these rudimentary facilities. In the 1840s, John Pounds, a Portsmouth cobbler, collected these ragged children and tried to give them some care and training in what was called the **Ragged Schools**. Notably, the immediate needs of these children were material - education was supplemental. The idea was carried further by Lord Shaftesbury who, in 1844, was instrumental in forming the **Ragged School Union**. Another prominent figure involved in similar philanthropic ventures was Dr. Thomas Barnardo who opened his first home in 1870. His first home for girls was opened in 1873. Between 1876 and 1914, Barnardo's homes sent over 24 000 orphaned children to the

American colonies in an attempt to provide work for the orphans (Lawson & Silver 1973: 284; Somerville 1982: 201; Walvin 1984: 117-118, 153-154; see 3: 4).

The primary function of the industrial and reform schools established in the mid-1800s was to shelter the juvenile offender from the harsh system of English justice. The impetus for this movement can be traced to Peter Bedford and others who, in 1818, founded the **Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders**. Their belief was that juvenile delinquency could be substantially reduced by establishing separate prisons for the young offender in a system adapted to reform. Later, in 1851, Mary Carpenter, an avid activator for more humane treatment for and the reform of young offenders, called a conference of like-minded people for the purpose of considering the conditions and treatment of the ... *Perishing and Dangerous Classes of Children and Juvenile Offenders*. Carpenter did not believe that reform was compatible with the general correctional system adopted at that stage and was given the opportunity to put her ideas into practice when she opened her mixed reform school, **Kingswood School**, in 1852 (Pinchbeck & Hewitt 1973: 353, 438, 474).

In the industrial schools (for children under 14) the emphasis was on work and the necessity for young people to support themselves while the reform schools, officially recognised under the *Youthful Offenders Act* (17 & 18 Vict.) c. 86 of 1854, (following the work of Mary Carpenter) provided for juvenile offenders under 16 who had served a minimum of fourteen days in prison. After this act, the reform school was an alternative penal institution for the youthful offender. The reform schools survived until 1969 (Lawson & Silver 1973: 284; Walvin 1984: 160). Most important however, was that a distinction was being made between *child* and *adult* and further, that society was acknowledging that it had an obligation towards the reform of this child who had gone wrong. In 1908, the *Children's Act* (8 Edw. 7) c. 67 (see 3: 3.1; 3: 3.3 & 3: 3.5) dealt the final blow to children being detained in prison. The welfare of the child, not the judgment of society was now paramount (Walvin 1984: 160; Pinchbeck & Hewitt 1973: 495).

Throughout the sections above, reference has been made to legislation passed to curtail exploitation and improve the educational opportunities for children. A brief summary of state intervention will now be provided to complete the description of the status and circumstances of children in England during this period.

3.5 The influence of legislation on the protection of and provision for children

From the preceding passages, it can be deduced that the child was initially seen as the chattel of its parents and that the law would only intervene on behalf of the child in cases of severe criminal assault. Concerned individuals and organisations provided their initiative and efforts voluntarily to protect the child from cruelty and exploitation. These efforts gained increasing state support as the activators succeeded in alerting society to its obligation towards its children. Statute law gradually remedied the deficiencies of common law and various statutes of the nineteenth and twentieth centuries established the child's legal rights. Legislation passed covered six general areas: protection against cruelty and neglect, protection against exploitation in the workplace, protection against parental power, physical maintenance in terms of clothing, shelter and food, provision for the reform of the juvenile offender and the provision of education for children. It is also evident that it was mainly the working-class child who most needed protection and provision in the domains categorised above.

The main events in which the child's legal rights in each of these domains were addressed will be outlined briefly.

Evidence of protection against cruelty and neglect is to be found in 1814 when child stealing was prohibited by the *Act for the more effectual prevention of child stealing* (54 Geo. 3) c. 101 (Pinchbeck & Hewitt 1973: 360). The *Infants Custody Act* (2 & 3 Vict.) c. 54 of 1839 was the first statutory intervention in the common law rights of the father. According to this act, the rights of the father were curtailed while those of the mother were enlarged and both were made subservient to the welfare of the child. Following an investigation by the **Parliamentary Committee on the Protection of Infant Life** (1871) (see 3: 3.3) into abuses of young children, especially babies, the *Infant Life Protection Act* (35 & 36 Vict.) c. 38 was passed in 1872. In the same year, the *Bastardy Laws Amendment Act* (36 & 37 Vict.) c. 9 which strengthened a mother's claim for maintenance from the putative father was passed. The *Births and Deaths Registration Act* of 1874 (37 & 38 Vict.) c.88 protected children from dying either unnatural or natural deaths without the demise being inquired into (Walvin 1984: 161-162). This act also facilitated the enforcement of factory legislation aimed at preventing the employment of under-age children. The *Prevention of Cruelty to, and Protection of, Children Act* (52 & 53 Vict.) c. 44 (1889) (see 3: 3.3) was passed in reaction to the efforts of the **National Society for the Prevention of Cruelty to Children** and considerably modified the common law rights

of parents and simultaneously protected the interests of the child (Pinchbeck & Hewitt 1973: 622-627). The 1908 *Children's Act* (8 Edw. 7) c. 67 (see 3: 3.1 & 3: 3.3) that came to be known as the *Children's Charter* extended the legal notion of neglect and defined terms regarding the minimum standards of maintenance for children (Rose 1991: 239).

The struggles of various notable people (see 3: 3.4) resulted in statutory protection against the exploitation of children in the workplace. The first *Factory Act* (1802) (42 Geo.3) c. 73 was meant to protect the health of pauper apprentices. Many reformers were inspired by the success of the anti-slavery movements and were quick to draw analogies between slaves and the lives of factory children (Hendricks 1990: 42). A measure of success was achieved and the *Factory Act* of 1833 (3 & 4 Will. 4) c. 103 forbade the employment of children under 9, restricted the number of working hours and made schooling obligatory for two hours a day, six days a week. The *Factory Act* of 1844 (7 & 8 Vict.) c. 15 introduced the principle of "half-time schooling" for children between 8 and 13 years. Children were to attend school either on three full days a week or for three hours on six days in each week. The *Workshop Regulation Act* (30 & 31 Vict.) c. 146 of 1867 forbade the employment of children under 8 in workshops and specified working conditions and schooling requirements. The practice of half-time schooling advocated by these acts was continued until school attendance became compulsory for children under 13. (See the *Education Act* of 1918 discussed further on.) Child employment was further restricted by the 1903 *Employment of Children Act* (3 Edw. 7) c. 45 which outlawed the employment of children under 14 in jobs injurious to the child's health. This act supplemented the *Prevention of Cruelty to and Protection of, Children Act* (Rose 1991: 9-30; Smith 1951: 20).

Many were concerned about the harsh conditions of punishment for children and strongly advocated for more humane treatment of juvenile offenders (see 3: 3.4). Reformatories, established mainly through voluntary effort, achieved state acceptance through the *Youthful Offenders Act* (17 & 18 Vict.) c. 86 of 1854 and in 1908 the *Children's Act* (8 Edw. 7) c. 67 ruled that children under the age of 14 could not be sent to prison (Muncie 1984: 38-39).

Initially a *laissez-faire* attitude towards providing education was adopted. Education was not regarded a responsibility of the state, but a service to be rendered by philanthropy - of voluntary and private enterprise. Schools of many kinds were established by such generosity: charity schools, ragged schools, workhouse schools, Sunday schools and others

(see 3: 3.4). In 1833 the state began a practice of making annual grants to the various voluntary societies and this led to the establishment of a small central department of education. By 1870 it became clear that a national system of education had to be established - hence the *Elementary Education Act* (33 & 34 Vict.) c. 75 of 1870. A dual system of voluntary schools belonging to the various churches and local authority schools - the School Boards - was agreed upon. The *Elementary Education Act* (39 & 40 Vict.) c. 79 of 1876 was designed to improve school attendance and defined the legal obligation of parents. Further acts passed before the turn of the century made elementary education both compulsory and free. The *Education Act* (2 Edw. 7) c. 42 of 1902 abolished the local authority schools and lent financial assistance to the voluntary schools by subsidising them with taxes and local rates. According to the *Education Act* (8 & 9 Geo. 5) c. 39 (1918), also known as the *Fisher Act*, the school leaving age was set at 14 and by 1944 public education was divided into three progressive stages - primary, secondary and further education (Lawson & Silver 1973: 384, 417; Smith 1951: 9-22).

This section would be incomplete if the highlights of the *Children's Act* of 1908 (8 Edw. 7) c. 67 (see 3: 3.1 & 3: 3.5) were not detailed. A major shift in the definition of childhood was achieved. Childhood ended at the age of 14 and until this age, courts were seen as the agencies for the rescue as well as the punishment of children. Negligence as well as cruelty towards children was punishable. The child was also sheltered from harmful practices such as drinking and smoking. The age of sexual consent was 16 and the vote was gained at age 21. Children were - in theory - not allowed to work, were obliged to attend school and their physical condition was monitored through school meals, medical treatment and compulsory games. Similar provision was made for destitute children in institutions. Children who broke the law were helped rather than merely punished. The lives of millions of children were improved by this fundamental revolution in the prevailing social climate (Walvin 1984:167-168).

3.6 Summary

At the start of World War I children were perceived to have legal rights that were independent of their parents and which the state had the power to safeguard. Recalling the sentiments of Hannah More (see 3: 1) the full course of the activities of these "child-savers" becomes significant. Initially, children were completely at the mercy of adults. When various charities and individuals took it upon themselves to improve the plight of the child,

the law and the state needed to intervene to supply adequate statutory protection and control. Although there are instances where individuals have had their own interests at heart - not necessarily to the exclusion of the interests of the child - such as to promote a particular religious doctrine, procure cheap labour or to satisfy personal needs (e.g. acquire custody of one's child), the underlying motivation of these individuals would seem to be a belief that the child does indeed have particular rights which need to be protected and nurtured.

4 A REVIEW OF THE STATUS AND ROLE OF CHILDREN IN AMERICA: COLONIAL AMERICA TO THE EARLY TWENTIETH CENTURY

To adequately understand the character and fabric of American society, it is necessary to briefly trace the history of this relatively young nation. The social, political and economic upheavals of the west provided the impetus for the colonisation of the New World during the seventeenth century. This new continent and its perceived opportunities acted as a lure and whole families and independent individuals emigrated to the Americas hoping to find a refuge from political or religious oppression and to gain a fresh start in life (Bremner 1970: 3-5).

Geographically, colonisation was separated into three regions each characterised by a distinctive societal ambience. There was the Massachusetts Bay Colony (New England) colonised mainly by Puritan families who sought freedom to worship according to their particular religious beliefs, to create a Christian commonwealth and to whom relocation meant the opportunity to *benefit their children's souls*. Colonisation of the middle Atlantic states and the south was based on commercial grounds and it was here that agriculture and industry flourished. These two areas were settled mainly by individuals; farmers, apprentices and also indentured servants - many of whom were delinquent or neglected children who, by the authorisation of the *Transportation Act* (1718) had been legitimately transported from England (see 3: 3.1) (Tozer et al 1993: 16). Municipal authorities of England who had responsibility under the *Poor Relief Act* (9 Geo. 1) c. 7 for the care of orphans and abandoned children were another source of supply (see 3: 3.4). These children were generally "bound out" to families (Bremner 1970: 3, 5, 28; Krisberg & Austin 1978: 9).

Although a number of Dutch Puritans were among the first to emigrate to the New World, the newcomers were predominately British who inevitably brought with them English customs and attitudes. However, the settlers were to encounter novel cultural and social situations for which they had no antecedent. The presence of indigenous Americans, the arrival of Scottish, Irish, Swiss, Jewish and German immigrants as well as Negro slaves (first introduced in 1619) from Africa were examples of situations which required adjustment to traditional English conventions (Axinn & Levin 1992: 23; Bremner 1970: 29, 185).

Although different authors (Axinn & Levin (1992), Bremner (1970) and Hawes [1991]) provide diverse classifications, American history can roughly be divided into the following chronological periods: colonial America (1600-1735), the period of the enlightenment and revolution (1735-1820), the era of the establishment of democracy (1820-1890), and the progressive era (1890-1920) (Axinn & Levin 1992: vii-viii; Bremner 1970: x-xi). Each period was characterised by a distinctive social climate.

Society in the colonial period was carefully structured and each person whether adult or child had a specific role and place in the social web (Hawes 1991: 2). The well-being and the very existence of these fledgling colonies depended upon the contribution of each of the colonists - old and young alike. This is probably most clearly demonstrated by the Puritan's perception of work as moral and idleness as sin. As a result, a distinctive work ethic emerged which greatly influenced social attitudes and behaviour for centuries to come (Axinn & Levin 1992: 4; Greenleaf 1978: 98).

A social welfare system developed in which farming out, indenture and apprenticeship were practised in an effort to prevent pauperism and to ensure that all were potentially profitable to themselves and to the community. The apparent importance of assigning the unattached, neglected or dependent individual to a family reflects the perceived importance of an orderly family life that provided support and an opportunity for the learning of economic self-reliance and religious salvation (Axinn & Levin 1992: 15-18; 22).

However, at the end of the colonial period, class differences had emerged. Industrialisation had necessitated urbanisation (according to Tozer et al (1993: 49) there was a dramatic increase in urbanisation between 1790 and 1810) and increasing immigration during this period contributed not only to urban population growth, but also to social fragmentation (Mohl 1979: 27). By the time of independence (1776) an aristocracy had evolved. Beneath

this class, a middle-class of farmers, artisans, tradesmen and labourers in the fledgling industries had evolved. Another distinct class consisting of mainly non-English, non-Protestant and sometimes non-white individuals was also found (Axinn & Levin 1992: 25). The reality of this larger, often discontented lower-class eroded the stability of the old order as well as the values and norms that had sustained it. The well-regulated society of colonial times was now plagued by social disorder which could be attributed to increasing immigration, urbanisation, industrialisation and increasing pauperism (Mohl 1979: 28, 30-31). Of the social classes, the children of the upper and middle-classes grew up in comfortable circumstances while the children of the poor had little to be envied (Bremner 1970: 343).

Social climate too underwent perceivable change. During the colonial period (1600-1735) society reflected a distinct religious ambience. The period of the enlightenment and revolution (1735-1820) revealed a more secular and materialistic view of life. In this regard, the British philosopher John Locke (1632-1704) strongly influenced Americans. It is generally accepted that Locke's American counterpart was Benjamin Franklin (1706-1790) who shared a secular and utilitarian point of view (Bremner 1970: 131).

To understand the American legal system it needs to be noted that British Law was initially followed. After independence, a new constitution was drafted and implemented. The united independent states were much more powerful than their colonial counterparts (Bremner 1970: 188) and federal government had jurisdiction over the entire spectrum of the independent states.

It is against this diverse social, economic and legal background that the plight and status of the American child will now be reviewed.

4.1 The familial, social and legal status of the child

The primary social institution in the colonial period was the family (Hawes 1991: 1). The father was the undisputed head of the family and all household members, whether through birth or indenture or apprenticeship, were accountable to him (Greenleaf 1978: 99; Hawes 1991: 3; Krisberg & Austin 1978: 12). Parental duties included maintaining and educating their children and making provision for their future usefulness in life. These duties consequently implied that children had related rights. Children also had the right to be

protected from undue parental severity. According to the *Body of Liberties* enacted in 1641 children guilty of cursing or striking a parent could receive capital punishment, but, provision was made for the child to appeal should he be able to prove provocation or cruelty on the parent's behalf. In 1646 the *Stubborn Child Law* was passed. This act broadened the definition of rebellious children but this time no allowance was made for children to argue their case. However, the stubborn child was to appear before court and parents were admonished to avoid unnecessary severity. These were the first codes to offer legal protection of any kind to children in America (Hawes 1991: 4-5, 10).

Parents were the natural custodians of their children but if they failed in any of their obligations, the state, according to the doctrine of *parens patriæ*, could intervene on behalf of the child (Hawes 1991: 1-2) and remove children from such homes. These children were then indentured or bound out to foster families. Even some Puritan families who were concerned that they might spoil their children by loving them too much, sent their children to the homes of relatives, friends and even total strangers as indentured servants (Bremner 1970: 64; Greenleaf 1978: 89; Hawes 1991: 7).

In years to come, domestic privacy was upheld and state intervention was perceived a subversive attempt to violate the sanctity of the family - an attitude which was to frustrate and impede reformers when cases of abuse and neglect needed to be investigated and acted upon. However, the state retained its jurisdiction over the family and in nineteenth century America, the right of *parens patriæ* was broadened to sanction removal of children from unfavourable homes. The sanctity of the family was thus subordinated to the welfare of the child and the good of the community (Pleck 1987: 7, 75).

Parenting in this New World led to the cultivation of an American youth with a distinct identity. The American child was reputed to be more independent, individualistic and socially precocious than his European counterpart (Greenleaf 1978: 87-88). The welfare of children appeared to become the preeminent goal of family life and, to judge by the number of child-rearing manuals which appeared after the 1820s, parents were amply provided with appropriate guidance. As the nineteenth century wore on, the status and perceived importance of children and childhood escalated. The development of paediatric medicine, professional experts such as psychologists and social workers and the child-study movement reflected a growing concern for the welfare of the child and the importance of childhood (Hawes 1991: 27-29). Childhood was also losing much of its variety thanks to compulsory school attendance laws (see 3: 4.2). Schooling, compared to

colonial times, was much prolonged. This in itself posed a unique situation: the child remained dependent on his family for a longer period, schooling could extensively influence the development of the child, a unique youth culture was developing and childhood was increasingly alienated from adulthood (Greenleaf 1978: 122).

The legal status of the American child was also distinctive. Children in America during the first part of the nineteenth century enjoyed certain rights derived from parental obligations as described above. In addition there were instances where the rights of children were protected by legislation e.g. disputes over custody, where the formal rights of parents, particularly fathers, were overruled. It could be suggested that such behaviour was only possible because children enjoyed enhanced social status (Bremner 1970: 344-345, 363).

However, not all children were privileged. The plight of the Indian child was unenviable. Traditional life was being subverted by American culture: the time-honoured ways of childrearing were ineffectual in the new social climate and Indian children seemed destined to being misunderstood and treated as social misfits (Bremner 1970: 345-346). Negro slave children were no better off. From the age of 6, slave children were broken into the routine of work. Children with one free and one slave parent were regarded as illegitimate and all children of slaves were denied legal protection for family life and could legally be separated from the core family. Further, the slave child was denied an education for fear of what it might do to his expectations and acceptance of his station in life (Bremner 1970: 345-346; Greenleaf 1978: 113-114).

The wave of migrations from the late eighteenth century onwards caused new social problems. Migration directly impacted on urbanisation and industrialisation and although the immigrant child did not import delinquency and dependency to America, by the mid-1800's about half of the inmates in reformatories and houses of refuge were immigrant children. Philanthropists - who at heart wished to remove these disruptive elements from society in order to protect their own interests - believed the answer lay in Americanisation which would have a proselytising effect. Education and labour had proved ineffectual in dealing with the immigrant problem - an entire transformation of character was believed to be necessary. In support of this view, the **New York Children's Aid Society** founded in 1853 placed immigrant children from the slums with farmer's families in the west. Other societies which had similar intentions were the **New York Association for the Improvement of the Condition of the Poor**, the **Children's Mission to the Children of the Destitute in Boston** and the **Five Points House of Industry** in New York

(Bremner 1970: 398-401). The efforts of these associations are investigated at greater length in 3: 4.3 and 3: 4.4.

4.2 Child labour and apprenticeship

The family was the basic unit of production and the framework within which labour was performed. Children assisted their parents in farm and domestic tasks, in stores and in workshops - children were an integral part of the colonial labour system. Bremner (1970: 103) aptly remarks, *child labour was a social fact and not a social problem*. Necessity justified child labour and religion sanctified it (see 3: 4.1). According to Puritan ethic, work was essential to salvation. In affluent families, parents customarily bound their children out to other households to serve as servants or apprentices so that they would experience and profit from the discipline of work. This work ethic was not restricted to New England, and Quaker children in Pennsylvania entered daily in their copybooks: *By the sweat of thy brow thou shalt eat thy bread* (Bremner 1970: 103; Greenleaf 1978: 98).

Evidence of social acceptance of and commitment to child labour is found in the 1641 General Court of Massachusetts order: *All masters of families should see that their children and servants should bee industriously implied ... without abridging any such servants of their due times for foode and rest or other needfull refreshings*. Close on a decade and a half later the same court decreed: *All hands not necessarily imployd on other occasions, as woemen, girles and boyes, shall, and hereby are, enjoyned to spin according to their skill and abillitie...* (Bremner 1970: 103).

Child labour other than in family context also occurred. Child apprentices and servants came to the colonies either as redemptioners who entered into agreements committing themselves to pay for their passage to America by servitude or as refugees from orphanages and workhouses in England (Bremner 1970: 104; see 3: 3.4). Legally, servitude and apprenticeship were distinct entities. Apprenticeship required that the child be taught a specific trade that would augment the skilled labour force thus fulfilling a social need. Two classes of apprentices developed: compulsory - where town and church officials bound out poor and orphan children and which served until the individual was twenty-one and voluntary - where a child and his parents entered into an agreement on their own initiative and which normally lasted for seven years. The master acted *in loco parentis* and assumed responsibility for the material and spiritual welfare of the child (see 3: 4.1). He was also

obliged to provide the child with instruction in reading, writing and arithmetic (see 3: 4.5). The child in turn owed his master service, obedience and loyalty (Bremner 1970: 105).

The industrial revolution was brought to America in the early 1760s by the cotton industry. Given the heritage of child labour, it was quite natural for Americans to depend on child labour to assist in the newly founded factories (Bremner 1970: 145). The machinery to be used in the industry was ideally suited for the employment of children who could efficiently tend the spindles and easily pick up and knot the broken threads (Bremner 1970: 147; Krisberg & Austin 1978: 13). In the words of Tench Coxe, a giant in the American industry, the children became *the little fingers ... of the gigantic automats of laborsaving machinery* (cited in Bremner 1970: 146). Sanction for child labour was still to be found in the existing ethos of the sanctity of work. In addition, child labour freed the community of the poor, idle and potentially vicious elements of society. Recruitment of children for factory labour followed one of two systems: the family system where the entire family was recruited and moved from the farm to the town where they lived in company housing and the boardinghouse system where children (mostly girls) were employed for work in the factory while the parents remained on the farm (Bremner 1970: 146-147).

The historian Walter Trattner is less complementary about child labour and accuses factory owners of hiring children because they were cheap labour and because they were thought to be *more tractable, reliable and industrious, quicker, neater and more careful, and as labor unions developed, less likely to strike* (Hawes 1991: 41).

Although the benefits of the newly established industry were widely propagated, industrialisation with associated urbanisation unquestionably affected family life and children. The family as an independent economic unit was disrupted, conditions of poverty spread and paternal authority lost its primacy (Krisberg & Austin 1978: 13). Children were able to gain a measure of independence and they viewed the mills as providing an opportunity to escape the drudgery of the farm (Bremner 1970: 148). Nevertheless, the interests of the factory child were not protected: the factory owner was under no obligation to educate the child and society was so intrigued by the contribution of the "little fingers" to national prosperity and independence, that it neglected to consider the plight of the child (Bremner 1970: 149, 559; Greenleaf 1978: 103).

Between 1830 and 1837 (in keeping with the spirit of democracy characteristic of the period [see 3: 4]) - there were rising protests against child labour. Articles, sermons and public addresses which attested to the "suffering", "encouragement of delinquency" and the "neglect of education" were common during this time. Issues that troubled society were the lack of provision for the child's education, the hazardous working conditions and the moral welfare of the child (Bremner 1970: 612-615; Goldstein 1976: 31). The first child labour law to require provision for the education of factory children was passed in Connecticut as early as 1813. Reform action spread to Massachusetts and prompted the statute of 1836 (*An act to provide for the better instruction of youth employed in manufacturing establishments*) and the *Act concerning the employment of children in manufacturing establishments* in 1842. Similar legislation in other states soon followed and within ten years, eleven school attendance laws had been passed (Bremner 1970: 149, 559, 624-628; Hawes 1991: 41). There was unfortunately little enforcement of these regulations and employees and parents easily circumvented them (Hawes 1991: 41). More than fifty years elapsed after the passing of the first of the new generation child labour laws before inspectors were appointed to enforce these laws as was the case in 1867 in Massachusetts (Goldstein 1976: 31).

Just who were these people who concerned themselves with the plight of the child labourer? What were their motives for advocating on behalf of the child? Platt (1979:58) points out that child labour legislation in New York, for example, was supported by several groups including industrialists who did not depend on cheap child labour. Their involvement - it is speculated - was a means to drive out marginal manufacturers and tenement operators to consolidate and increase the efficiency of business. It should be remembered that these changes were occurring at a time when the social climate was characterised by the pursuit of democratic principles (see 3: 4).

In response to increasing child labour, the **Knights of Labor**, a major labour organisation in the 1880s, actively pushed for legislation regarding child labour. By 1899, 28 states had some form of legislation to protect child workers. These regulations generally addressed minimum age, maximum number of hours of employment and schooling provisions (Goldstein 1976: 32). During the progressive era (1890-1920) social reformers banded together in the **National Child Labor Committee** (1904) to lobby for legal protection for young workers. After 1908 the minimum age at which children could be employed was 10 and eventually rose to 16. In addition, precautions were mandated to ensure the health and safety of young workers. The committee viewed childhood as sacred and believed that

industrialisation and commercialism should not be allowed to touch the child (Hawes 1991: 44-45). It is interesting to note the similarity between these prescriptions regarding children and the principles spelt out in the *Children's Act* enacted in England in 1908 (see: 3: 3.5).

A goal of the **National Child Labor Committee** was to create a federal children's bureau whose function it would be to collect information on child labour and topics related to child welfare and children's rights. The **U.S. Children's Bureau** was established in 1912 after the **White House Conference on the Care of Dependent Children** in 1909 added momentum to the movement. Supporters of federal regulation of child labour had to try three times (laws were passed in 1917, 1919 and again in 1924, only to be declared unconstitutional by the Supreme Court) before successfully having anti-child labour laws passed (Hawes 1991: 47-53). In 1938 the *Fair Labor Standards Act* abolished child labour in some industries and in hazardous jobs (Goldstein 1976: 34).

4.3 The care of dependent children

American colonists attempted to continue the traditional English way of caring for orphans, destitute and neglected children. Bastards were to be supported by the father or if he could not be determined, the parish or town accepted responsibility. Orphans - whether in almshouses or orphan homes - were bound out to foster parents as were the destitute and neglected. There they would remain until the age of majority had been reached. But, as time passed, this practice of assigning free born children to involuntary servitude could hardly be reconciled with the ethic of the young republic (Bremner 1970: 263).

Furthermore, novel situations which arose from the Indian massacres, natural disasters or epidemics created large numbers of homeless orphans - a situation for which there was no precedent in English Poor Law. The obvious solution was some form of institutional care (Bremner 1970: 29, 64) but prior to 1800 orphan homes or asylums for dependent children were very rare and children were generally housed in almshouses together with older paupers, the insane and the diseased. Exceptions were the **Ursuline Convent** in New Orleans (1729) and the **Bethesda Orphan House** established in 1739 by George Whitefield. The great age of orphanages set in after 1830 when women became increasingly active in philanthropy. Although these institutions were primarily privately

funded, they were entitled to assistance from public funds which indicates that the public acknowledged its obligation in this regard (Bremner 1970: 262, 271; Hawes 1991: 8).

In 1819 the **New York Society for the Prevention of Pauperism** proposed that the character of the poor could be improved and dependency eliminated by *inculcating religion, morality, sobriety and industry, and by diffusing useful knowledge among the indigent and laboring people*. These pronouncements reflected the typical social view that poverty was the direct result of idleness or character defect (Hawes 1991: 40; see 3: 4.4). A flurry of philanthropic associations arose to attempt to end the causes of pauperism. Disadvantaged children were soon to benefit from these efforts. Charities that proposed to educate poor children, almshouses for the care of poor children, and charities to aid orphans were swiftly established. The **New York African Free School Society** aimed to make blacks "safe and useful members of society" and "quiet and orderly citizens"; the **New York Free School Society** attempted to promote "fixed habits of industry, decency and order". The **Sunday Schools** which proliferated after 1816 were aimed at promoting "habits of order, submission and industry" and checked "destructive habits" and increased "public safety" (Mohl 1979: 32-33).

American poor law reformers like Josiah Quincy of Massachusetts and JVN Yates of New York identified four methods of public assistance to the poor: outdoor relief (assisting the needy in their own homes), vendue (auctioning off to the lowest bidder), contracting with the lowest bidder for an entire lot of paupers, and the almshouse under public authority. Poor law and charity reformers of the 1820's and 1830's conceded that outdoor relief was the most pernicious form of assistance, that the vendue and contract systems were to be disdained and that institutional care probably presented a reasonable option. However, it was pointed out that the almshouse was no place to raise a child and the removal of children from almshouses was urged. These petitions went unheard. The number of children in almshouses rose steadily but between 1830 and 1865, fifty-six private orphan asylums were established by individual philanthropists, ethnic and occupational groups, benevolent associations and religious groups. Although the orphan asylums were seen by some to be vastly preferred to the almshouse situation, a fierce critic of this system of dealing with children of the poor was to be found in Charles Loring Brace, secretary of the **New York Children's Aid Society**. He was opposed to institutional life of any kind and insisted that the best place for dependent or needy children was in foster homes (Bremner 1970: 631-632, 655; see 3: 4.4).

A new dimension to the problem of the neglected and destitute child arose: abuse. Increasing instances of child abuse (*inter alia* physical and sexual abuse, cruelty and violence) were being encountered and action had to be taken to protect the child from a society which was growing increasingly abusive. In America, animal protection preceded child protection. This was not because the public was more concerned about animals than children but because of a reluctance to violate the privacy of the family (Pleck 1987: 79). However, the case of Mary Ellen, a little girl who had been wretchedly abused by her foster mother, ignited social concern for child abuse. As there was no legal way to secure the release of the child, the help of the **Society for the Prevention of Cruelty to Animals** was called in (see 3: 3.3). The child was removed from her foster mother and committed to an orphanage and later placed in foster care. In that same year (1874) the **New York Society for the Prevention of Cruelty to Children** was founded (Pleck 1987: 70-72).

Movements opposing child abuse grew steadily. In North Carolina the appellate court of 1838 defined child cruelty as *those acts that endangered life, limbs, health, or caused disfigurement or permanent injury* (Pleck 1987:76). In 1884, the **Brooklyn Society for the Prevention of Cruelty to Children** defined cruelty as:

- a) all treatment or conduct by which physical pain is wrongfully, needlessly or excessively inflicted; or
- b) by which life or limb or health is wrongfully endangered or sacrificed; or
- c) neglect to provide such reasonable food, clothing, shelter, protection, and care as the life and well-being of the child require;
- d) the exposure of children during unreasonable hours of inclement weather, as peddlers or hawkers; or otherwise
- e) their employment in unwholesome, degrading, unlawful, or immoral callings;
- f) or any employment by which the powers of children are overtaxed or their hours of labour unreasonably prolonged; and
- g) the employment of children as mendicants, or the failure to restrain them from vagrancy or begging (Pleck 1987: 83).

Implied by this list was a kind of *Bill of Rights* for children. Another important advancement made by these anti-cruelty associations was that they had the right to intervene on behalf of children - unlike the **Houses of Refuge** (see 3: 4.4) which could merely receive children (Hawes 1991: 22).

Speculation about the motives of anti-cruelty advocates abounds. The motives are perceived to range from the middle and upper-classes feeling threatened by the problems of industrialisation, urban growth, poverty and crime and reacting to this threat by attempting to refashion and control the family life of the poor, to taking steps to protect their privileged positions in society (Pleck 1987: 73-74). Another theory is that anti-cruelty societies stemmed from an increasing humanitarian mood and a recognition of childhood as a separate and protected stage of life - a precursor in recognising children's rights (Platt 1979: 57). Further critique accuses reformers of imposing middle and upper-class standards on poorer neighbourhoods without understanding that poor people both had and enforced their own codes of respectability and propriety (Hawes 1991: 24). Another explanation is provided by the historian, James Turner, who points out that Puritan society believed physical suffering to be an act of God and a punishment for sin. However, as medical advances brought the ability to control pain, physical discomfort was no longer seen as part of divine retribution (Pleck 1987: 77) and consequently, society was at liberty to counter physical abuse and exploitation.

In retrospect, it could be argued - if not rather cynically - that society's response to child dependency and abuse (both of which were exacerbated by industrialisation and urbanisation) was not primarily to protect the child but to reduce the drain on the public treasury and to maintain social stability and order (Hawes 1991: 9).

Burgeoning urbanisation was also the cause of yet another social problem - juvenile delinquency. Juvenile delinquents as a group of children and youths were dependent on the care and protection provided by social institutions and societies, but, because their reasons for manifesting their need arose from their alleged contravention of social conventions, the provision made on their behalf will be discussed in a separate section. It will be noted that there is a substantial amount of similarity between this section that deals with the care of neglected and destitute children and the section that deals with juvenile delinquency - the reasons are self-evident.

4.4 Juvenile delinquency: children in need of reform

Juvenile delinquency in America was a problem caused mainly by escalating urbanisation, increasing poverty and immigration. No special facilities existed for the correction or reform of young offenders and authorities recognised that the prevailing system of

imprisoning young offenders with adult criminals was cruel, unsatisfactory and undesirable, but no alternative existed. Some town officials provided their own method for solving this dilemma by binding the youthful delinquents out, but imprisonment remained the standard solution. Public concern regarding the plight of delinquents was raised when, in 1817, the **Society for the Prevention of Pauperism in the City of New York** called attention to the problem of young offenders being committed to penitentiaries (Bremner 1970: 307-308). In 1824 the society adopted a state charter in New York under the name of the **Society for the Reformation of Juvenile Delinquents** and in 1825 the first juvenile reformatory, the **New York House of Refuge** was opened. This paved the way for similar institutions in Boston (1826) and Philadelphia ((1828). From the outset, these institutions housed both destitute and wayward youth (Krisberg & Austin 1978: 15). The institutions aimed to train youths to become independent moral agents by inculcating in them a work ethic, moral values and basic school skills. The reformers hoped to demonstrate that delinquents were capable of being converted into law-abiding citizens. After learning basic skills, these juveniles were apprenticed to local artisans and farmers. Girls were bound out as housemaids and older boys could be indentured to ship captains. Prominent advocates for juvenile reform were Enoch Wines (1806-1879), secretary of the **New York Prison Association**, Theodore Dwight, Dean of **Columbia Law School** and Zebulon Brockway, superintendent of **Elmira Reformatory** in New York (Bremner 1970: 671-672; 1978: 17; Platt 1969: 46).

It was commonly believed that delinquency was hereditary and caused by environmental taints (Platt 1969: 51) and attempts to reform or prevent delinquency were directed at correcting one or both of these factors (Hawes 1991: 11). The early reformatories mentioned above aimed at "correcting" the juvenile delinquent without addressing those issues which had caused the deviant behaviour. Amidst growing concern for the escalation of vagrant and delinquent children on the streets of the major cities, the **New York Children's Aid Society** was founded in 1853 with Brace as secretary (see 3: 4.3). The objective of this society was to prevent rather than correct juvenile delinquency. Also underlying the **Children's Aid Society** was the belief that the city was no place to raise a child. Children would be provided with vocational training and would then be placed out in the country. Based on the idealised notion of the American farm family, Brace and the society believed that delinquency could be solved if vagrant and poor children were gathered up and placed out with farm families (Hawes 1991: 18; Krisberg & Austin 1978: 19). Possibly prompted by Brace's aversion to institutionalisation, two state reform schools, the **Massachusetts State Industrial School for Girls** (1856) and the **Ohio Reform**

School (1857), divided their inmates into "cottage families" in an attempt to simulate a family climate (Bremner 1970: 673).

The creation of the juvenile court is generally regarded as a great advance in child welfare (Platt 1979: 54). The *Illinois Juvenile Court Act* of 1899 guaranteed the right to trial by jury as well as that the care, custody and discipline of a child convicted of an offence would approximate that which he would receive from natural parents. Legislation was to serve the interests of the child (Hawes 1991: 33). In 1901, the definition of delinquency was modified and the delinquent child was subsequently defined as a child under the age of 16, *who is incorrigible; who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness or crime; or who frequents a house of ill-fame; or who knowingly patronizes any policy shop or place where any gaming device is, or shall be operated* (Hawes 1991: 33). However, the juvenile court system was not without fault. Instances of inappropriate use of the system or the too rigid application of the rules of the courts were brought to notice and the courts were accused of acting in the best interests of the child but without taking the child's rights or those of the parent into account (Hawes 1991: 34).

Described above are but some of the attempts to address the needs of the delinquent child. Underlying these attempts was the perception that the objectives of reform could be achieved through some manner of education or training. This belief in the potential of education can be traced back as far as to the period of colonisation.

4.5 The education and schooling of the child

Throughout the colonial period the child was foremost a worker, not a student. However, according to the Puritan ethic, education contributed to salvation and instruction was consequently perceived to be of the utmost importance (Greenleaf 1978: 91-92). Ordinarily education in New England began in the home. Parents taught their children the alphabet and the rudiments of reading and writing. Lack of inclination or time sometimes prompted parents to send their children to a neighbour, usually a poor widow, for instruction. This was the origin of the **dame schools** common throughout New England. The first **grammar school**, modeled on the traditional English grammar school, was established in Massachusetts in 1642. The Massachusetts law of 1642 obliged all parents and masters to supply instruction to children in their care, however, instruction could take place either

at home or in the schools provided. The *Massachusetts School Law* passed in 1647 by the General Court of Massachusetts was the first step taken to establish a system of public education. (The popular name for this law was the *Old Deluder Satan Act* [Power 1991: 237]). Towns of fifty households or more were required to maintain a schoolmaster for elementary skills and larger towns of one hundred households were required to employ a grammar schoolmaster to prepare boys in Latin and Greek for entrance to college. Although the establishment of schools was compulsory, it did not oblige attendance [Bremner 1970: 72-73, 79; Greenleaf 1978: 92].

New England was unique in its commitment to education and the other American colonies did little to encourage education or impose educational standards. In the middle Atlantic colonies, the Quakers built and maintained elementary schools. The three R's were taught but further education was neglected because, in their view, it fostered undue pride and induced idleness [Greenleaf 1978: 95]. In the southern colonies, the only elementary schools were charity schools supported by local authorities or private endowment. Secondary education was confined to a few expensive private schools [Bremner 1970: 73]. Although primary education was rudimentary and deteriorated towards the southward states, literacy is believed to have been higher in the American Colonies than anywhere on the European or British continent during this period [Bremner 1970: 74].

The education of indigenous tribes posed a unique challenge and early colonists took it upon themselves to impart Christian morality and values to these groups. The founders of Virginia saw their task as *propagating the Christian religion to such people, as yet live in darkness and miserable ignorance* [Bremner 1970: 75]. The education of Indian children was assisted by federal government after the War of 1812. Once the subjugation of the Indians was certain, the government turned to a "civilisation" policy and hoped to transform the Indians into white Americans or reasonable facsimiles. Standard methods met with limited success producing little more than a veneer of education which was stripped away as soon as the child returned to the tribe. (An exception existed among the Cherokees of the Southeast). It became evident that a different strategy would have to be employed and a movement to place the children in a boarding school away from family influence was implemented in the late nineteenth century. In general, it was the less formal institutions of society that were more successful in influencing the Indian peoples [Bremner 1970: 439].

Before the eighteenth century the black slave population was so small that the provision of education presented few issues for decision. However, at a later stage, the education of slaves raised serious questions. Slave owners feared that if slaves were educated and converted to Christianity, they would claim their freedom. The **Society for the Propagation of the Gospel** however, felt bound to prepare slaves for baptism and to supply elementary instruction. This dilemma was resolved in part when the assemblies of the southern colonies and the British government declared that baptism gave no claim to freedom [Bremner 1970: 96, 319]. The education of blacks came under closer restriction after the **Nat Turner Revolt** of 1831 and elementary education for Negro slave children was outlawed. Most of these laws remained in force until the Civil War (1861-1865) [Bremner 1970: 437]. It would be naive to believe that the abolition of slavery by the *Emancipation Proclamation* of 1863 resulted in easy access to equal educational opportunities as racial discrimination continued to be practised [Tozer et al 1993: 85].

The Enlightenment era, industrialisation, social stratification, national prosperity, urbanisation and cultural diversity, independence and patriotism were issues which effected changes in social attitudes and expectations. Education needed to keep pace with these changes and reformers of the education system faced unique challenges. The **academy**, a modification of the grammar school, was an attempt to supply education for children in a mixed economy and society. This movement was started by Benjamin Franklin (1706-1790) who wanted to create an educational environment which would complement a more materialistic and pragmatic society. He proposed the inclusion of new subjects - modern languages, science, mathematics, history - and aimed to prepare students for careers in trades and professions. In addition, Franklin had two further objectives: to supply all children with an education which would make them useful, responsible citizens, and to prepare a select group to assume positions of political and social leadership [Bremner 1970: 185-187].

Several prominent proponents of a singular American-style education system can be identified. For instance, there was Benjamin Rush (1745-1813). Apart from promoting education that would prepare good and effective citizens, Rush prescribed attention to morality. From an analysis of his proposal, it is clear that Rush was without doubt declaring for Christianity [Power 1991: 258]. Yet another notable figure was Noah Webster (1758-1843) whose major contribution was his bid for America's linguistic independence. As a result of this view on language, from the adoption of the Constitution to the end of the second decade of the nineteenth century, the American language underwent considerable

change in vocabulary with the introduction of Americanisms (Power 1991: 247-248).

Thomas Jefferson (1743-1826) proposed a state controlled, free and universal education system. The three tiers of his educational structure were the elementary school, the grammar school and the university. He envisaged a fourth tier of life-long self-instruction. His fundamental educational philosophy was that universal education is essential to civic virtue and citizenship is education's primary objective. However, his proposals were premature and were consequently either rejected or postponed (Power 1991: 260; Tozer et al 1993: 33). Some of Jefferson's ideals were achieved after national independence in 1776 when education was almost entirely removed from local responsibility and placed under public control. Although the independent states were encouraged to accept greater power and responsibility regarding education, no substantial shift in the balance between private and public enterprise in education occurred (Bremner 1970: 188).

Although Americans did not lavishly support free schooling, the education of poor children had a special appeal. A fear of social chaos unless the virtues of order and discipline were in some way inculcated in the disparate American population moved philanthropists to contribute towards the education of poor children (Bremner 1970: 249). One such association, the **Public School Society of New York City**, was founded in 1805 to provide schools for poor children who did not attend the charity schools maintained by religious denominations (Bremner 1970: 249, 254).

The period between 1820 and 1865 was dominated by the **common school movement**. In this regard the name of Horace Mann (1796-1859), secretary to the Massachusetts State Board of Education, stands out. The public school movement was an attempt to secure a common core of belief and loyalty to maintain a balance between social stability and liberty (Hawes 1991: 14). Mann proposed an appropriate set of moral values in education but was concerned by the conflict between religious sects. A feature of the proposed system was consequently the non-sectarian stance which was adopted. Schools were expected to mould the young into loyal and useful American citizens; to assist the young to develop and fulfil their capabilities so that each individual would find the place he merited in the social order (Bremner 1970: 435; Power 1991: 265; Tozer et al 1993: 58). Mann's appeal that society recognise that these public schools would be for all children, not just the children of the poor (Hawes 1991: 14) possibly stems from the stigma that had hitherto been attached to public schooling.

The character of the evolving American society was to affect the nature of the provision of education. The mobile character of the American population emphasised the need for uniformity of instruction, the separation of students into grades, the standardisation of textbooks and uniform training for teachers (Bremner 1970: 436). During this period women teachers steadily became more numerous and two visible results to emerge were an improvement in the quality of instruction and an abandonment of corporal punishment as a daily occurrence (Greenleaf 1978: 117).

The importance of the American public school system is seen to be in the contribution it made to ensure equal opportunity for all children, regardless of race or social standing. With the implementation of regular standards, the use of standard textbooks and teaching methods, all American children were given a common cultural background and were taught a common set of values (Greenleaf 1978:120).

4.6 Summary

Major shifts in social attitude towards children from colonial times to the early twentieth century can be traced. The Puritans of the colonial period saw the child as innately sinful; during the Enlightenment under the influence of Locke and Jefferson, the child was viewed as neutral - a rational being upon which the environment would leave its mark; while according to the romantic view which followed independence through to the Progressive Era (1890-1920), the child was innately good. This view had important consequences for the evolution and development of children's rights (Hawes 1991: 12).

During the colonial period, the individual was subservient to the collective, the father signified authority and was responsible for the education of his children which initially occurred in the home. But from the nineteenth century onward, Americans sought to inculcate all children with the values of individualism with the result that the sense of social hierarchy (class distinction) and deference was lost. The authority of the father was challenged and education was under state control (Hawes 1991:12-13). It would seem that an anomaly was contained in the emerging ethos of individualisation: while education was striving toward ensuring conformity by *Americanisation*, individuality within this conformity was being sought.

The targets of reform were mostly immigrant and working-class children while the reformers were usually middle-class, native-born white Protestants. The reform efforts began with the care of abandoned, neglected, delinquent and abused children on the streets. These efforts were later expanded to include the child abused within the home. Society was sceptical about these activists and feared that the family would be undermined - this, despite the fact that the legal power to intercede on behalf of the child - *parens patriae* - had long been established (Hawes 1991: 25-26).

An issue with which the Old World nations had not had to contend and that added to the complexity of the New World experience (and for which there was no precedent), was the social diversity of the population. Not only were there the colonisers but also the native Americans, the immigrant and the slave communities who together formed the fabric of the developing nation. Religious diversity was also encountered - a problem which was presented mainly by the Irish immigrants who were overwhelmingly Roman Catholic. To the Protestant inhabitants, Catholicism was on a par with atheism (Tozer et al 1993: 49).

Although numerous issues have only vaguely been touched upon, it cannot be disputed that the American child - like all other children - is unique and that provision for and protection of his interests needed to be achieved against a diverse cultural, ideological and social backdrop.

5 A REVIEW OF THE STATUS AND ROLE OF THE CHILD IN FRANCE: THE FRENCH REVOLUTION TO THE EARLY TWENTIETH CENTURY

Under the *Ancien Régime* the mass of the people had no share in government - the nation was at the mercy of the King, the clergy and the aristocracy (Richards 1977: 9-10). As the expenses of the government rose (due to its extravagance and international warfare), so too did the taxes of the peasants who were already being grossly overburdened. Revolt was inevitable. The drive towards reform did not come from the peasants however, but from the educated section of the *bourgeoisie*. Their motives were not altruistic or in response to the conspicuous exploitation of the peasants, but arose from their resentment of, among other things, being excluded from official positions and of being denied religious freedom (Richards 1977: 10-12). In addition, France's involvement in assisting America gain its independence from Britain provided further impetus for her own reform activities (Richards

The year 1789 was a watershed year in France's history. Although the Monarchy under Louis XVI resisted reform, between May and August of that year the three *Étates* (clergy, nobility and others) amalgamated to form the National Assembly. Feudal privileges were abolished, equality of taxation and of legal punishment among the three orders was established and freedom of worship was granted. Next, a constitution had to be drafted - the preface of which was the **Declaration of the Rights of Man and Citizen**. The guiding principles set out in this preamble to the constitution were equality, liberty and fraternity [Richards 1977: 12-22; see 2: 2.4]. However, the mere statement of these principles did not automatically free the nation from its past oppression and even the spates of demonstrations, mob violence, wars, a *coup d'état* and the eventual deposition (1792) of Louis XVI and his execution (1793) did not lead to freedom and equality. Further dictatorship and revolutionary wars were to follow. Major events in the history of France which ensued include the rise and fall of Napoleon Bonaparte (1800-1814) and the establishment of the First Empire, the restoration of the Bourbons (1815-1830) under Louis XVIII, the establishment of the Bourgeoisie Monarchy (1830-1848), the Second Republic (1848-1852), the Second Empire (1852-1870), and the Third Republic (1871-1914) [Richards 1977: 22-100; 214].

It is in the light of these circumstances that the status and role of the child will now be reviewed. As in the previous reviews, the spotlight will inevitably fall on the working-class child - the child who was generally the vanguard of exploitation, neglect, and poverty.

5.1 The familial, social and legal status of the child

The period of childhood was divided into two stages: childhood and youth. Around the age of 7 it was believed that the child had reached the *age of discernment* and the first stage came to a close. After this age, the child either took up his responsibilities around the house and farm, or depending on his social status, was ready to leave home and enter the labour market or commence formal schooling. Adolescence as a distinct phase was only to be recognised in the late 1870s when youth of all social classes organised themselves into youth groups and youth culture movements were established. The age of majority was reduced to 21 for both male and female after the Revolution [Clark 1991: 280, 282; Gillis: 1974: 95].

According to Aries (1962) the aristocracy and the middle-classes became aware of the particular nature of childhood during the seventeenth and eighteenth centuries. This awareness was reinforced as manuals on child-rearing - the most famous being Jean-Jacques Rousseau's (1712-1778) *Emile* - encouraged parents to take a closer interest in the development of their children (Heyward 1988: 218-220; see 3: 5.4). During the mid-1800s a new domestic ideology among the middle-classes was seen to emerge: the ideal was for the women and children to remain at home while the father, as head of the family, was responsible for providing for the family. This would result in the removal of peasant and working-class children from the labour market so that the male bread winner could be assured of employment. In turn this would give children the opportunity to attend school and to acquire an education (Clark 1991: 280; Heyward: 1988: 3).

In pre-Revolutionary France three-quarters of the population lived in rural areas. The labour needs of the household defined the work roles of family members. The aim of every one's work was to secure enough to support the family (Tilly & Scott 1987: 12, 15). From the age of 7, children from both sexes were expected to make themselves progressively useful around the farm - both to lighten the burden of manual work of the household and in preparation for their own adulthood. The atmosphere of activity bred an obsession for keeping all hands busy and those who did not pull their weight became targets of public ridicule (Heyward 1988: 18-22, 55).

In urban society there were fewer domestic chores for children. If the labour of family members could not be used in the home, apprenticeship or other types of employment were sought in other households (Tilly & Scott 1987: 19, 22). Compared to other western nations, industrialisation in France started late and progressed slowly. During the nineteenth century agriculture still predominated (Tilly & Scott 1987: 63-64, 76). By the early twentieth century France was still less industrialised than other countries such as England and small-scale agriculture remained important (Tilly & Scott 1987: 151).

Various factors seem to have led to France being one of the first nations to deliberately curb its birthrate. Concern that so few infants survived the first year (even among the upper-class the infant survival rate was poor), about the costs of educating and sustaining children as well as concern over the division of family property or the inheritance among numerous heirs, were contributing factors. Among the aristocracy the situation of younger or "superfluous" children was precarious. To maintain their respectability, it became common for such children to enter into clerical celibacy or to seek a career in the army and

civil service. The fate of superfluous children was much worse among the poor and even the landed peasantry and urban artisans were not immune to pauperisation brought on by too large a family. These issues could well have played a part in bringing the birthrate down from 4,3 per married couple in 1740 to 3,4 in 1850 (Clark 1991: 28; Gillis 1974: 13-14).

Much more than the mere limiting of the birthrate was required to improve the situation of children. The child's status and role in society would need to be revised before it could be said that children were valued and respected members of society. Some of these conditions will be discussed in the section that follows.

5.2 Child labour: an atrocity or a necessity?

The employment of working-class children was a custom accepted without question. Generally rural working-class children were employed in their own households, but the precariousness of the family budget forced many children out to work. Alternatives included apprenticeship where the child moved from farm to farm, gleaning expertise and building a reputation as a competent worker (Heyward 1988: 59), or finding employment as a *domestique* or *servante* which was usually only a temporary measure for as soon as the son or daughter of the household had reached working age, the hired help was dispensed with. In the home industries girls could offer their services as spinners whereas weaving was the task of boys (Heyward 1988: 35-36).

Like the peasant, the urban wage-earner expected his children to work. Unlike the rural counterpart, the urban working-class had only the wages earned as means of support so it was only natural that children would enter the labour market as soon as possible (Heyward 1988: 107). During the opening phases of industrialisation there was an intensification of work opportunities for children and the employment of children had various advantages for the industrialist - children were agile and dexterous, and to boot, they were cheap and submissive (Heyward 1988: 112-113). However, from the 1840s onwards the number of children in industry began to decrease (Heyward 1988: 107) - a trend which could possibly be attributed to the fact that employers found child labour unprofitable in terms of both quality and quantity, and in addition, many of the tasks children had been performing were being mechanised (Heyward 1988: 120).

Industrialisation brought a concentration of children into the workshops and factories of the nineteenth century commercial enterprises (Heyward 1988: 106) and for the first time the extent of child labour came into public view. As a result, child labour came under fire from various quarters (notably from the middle and upper-classes) from the 1820s onwards and campaigns to improve the conditions of children in industry were launched (Heyward 1988: 3, 125). Speculation remains whether it was labour legislation or the underlying conditions in the labour market (mechanisation and employer disenchantment) which freed the child from employment (Heyward 1988: 6).

Aspects on which labour legislation needed to focus included the long working hours, the age of employment, health hazards (eye infections, lung diseases, and physical malformation were most common) and the fact that the child was being kept from attending school (Heyward 1988: 127). The 1837 **Enquiry on Child Labour** found that in the textile industries, children were being hired from as young as 5 or 6. Incidents of physical abuse were also revealed (Heyward 1988: 135). These findings led to renewed efforts to compel child labour legislation. Prominent advocates for reform were Jean Jacques Bourcart, who acted through the **Société Industrielle de Mulhouse**, and Louis Villermé and the **Académie des Sciences Morales et Politiques** (Heyward 1988: 217, 224-225). These reformers stressed the importance of passing legislation that would regulate the working conditions for children and encourage their primary instruction (Heyward 1988: 225).

An enquiry launched by the Minister of Commerce, Martin du Nord, in 1841 left the impression that industry were generally apathetic towards reform because they feared that legislation might disadvantage French competition on foreign markets. It required further vigorous efforts of the **Société**, the **Académie**, individual philanthropists and even the Roman Catholic hierarchy to sustain interest. In March 1841 the *loi Sur le travail des enfants des filles mineures dans l'industrie* (The law on child labour and minor girls in industry) was officially promulgated. Children under 8 were banned from factories and workshops using machinery or a continuous fire. Hours of work were limited according to age categories, night work was forbidden for children under 13 and school attendance was made compulsory for all working children under the age of 12. (The *loi Guizot* of 1833 had provided for a comprehensive systems of schools - see 3: 5.4). In addition the morals and decency of the children were to be protected (Heyward 1988: 229, 237).

In practice this law had little effect. Parents were indifferent to their children's schooling and preferred to send their children to work rather than to school (Tilly & Scott 1987: 107). New child labour legislation and a more effective inspection system was required (Heyward 1988: 6). A deliberate attempt to modify some of the established practices of industrialists and working-class parents was contained in new child labour legislation passed in 1874, but because the inspection service was deficient, this law too did little to change the attitudes of industrialists and parents (Heyward 1988: 273-274, 281).

Critics of labour legislation also abounded. Charles Dunoyer used the same forum which had advocated child labour legislation - the **Académie des Sciences Morales et Politiques** - to air his doubts on whether the state had the right to protect minors whose parents were neglecting their interests. He feared that if the work of children could be limited, it followed that women and eventually the whole of the working-class would claim rights limiting their working hours (Heyward 1988: 221). Manufacturers in turn complained of being harassed and claimed that the factory should be treated as a sanctuary as sacred as the paternal household and should not be violated (Heyward 1988: 228, 251).

Nonetheless, the 1874 law was superseded by legislation in 1892. The minimum age of employment was 13 - indicating that pre-adolescent children in industry was no longer acceptable to French society while the 1900 legislation ruled that young people under 18 were limited to ten hours of labour per day (Heyward 1988: 319). It would seem that the state recognised the necessity of child labour among the working-class and had therefore not abolished child labour. It could only be hoped that children would be adequately protected and provided for by prevailing legislation.

5.3 The care of destitute and abandoned children

Under the *Ancien Régime* the gamut of poor relief and charitable institutions had fallen within the orbit of the Church. Just as the Church constantly reminded the rich of their obligation to contribute alms to the needy, so too the feudal lord was to make provision for the poor on his estates. However, this situation was to change. The effective secularisation of large tracts of the country during the late eighteenth century terminated the Church's role. Religious observance and ritual fell away and with it the popular association of charity with religious devotion (Forrest 1981: 13-16.) The ending of feudal jurisdiction in 1790 had

brought with it the abolition of privileges. This in turn curtailed the landlord's obligation to care for the poor and destitute on his property (Forrest 1981: 122). The plight of the destitute deteriorated drastically. During the latter years of the *Ancien Régime*, taxes were specifically levied to fund relief for poor children but this measure was unable to satisfy the immense need that existed (Forrest 1981:117).

The concept of humanitarianism and equality featured strongly in the **Declaration of the Rights of Man and Citizen** (see 2: 2.4) and it was felt that the state had an obligation to intervene to alleviate the distress of the poor (Forrest 1981: 17-19). There was ample evidence that children in France were socially and intellectually deprived. A particular void existed in the level of care available to poor, orphaned and abandoned children - the *enfants trouvés* (foundling children) - and the provision of elementary education (Forrest 1981: 116; see 3: 5.4). In 1790 the **Comité de mendicité** (Committee for beggars) - whose task it was to diagnose and define relief for the indigent - and the **Comité des secours** (Committee for assistance) - which was responsible for payments to the indigent and to hospitals and poorhouses - were founded. The founding of these organisations were indicative that poor relief was no longer viewed as a form of charity but a basic human right, a debt owed by the state to all citizens, children as well (Forrest 1981: 17-30).

Child neglect was equated with child abandonment. Abandoned children were classified as those who had been abandoned because their parents were too poor to raise them themselves, and those who were abandoned because they were illegitimate and genuinely unwanted (Forrest 1981: 117). Industrialisation, rural hardship and continual warfare contributed to the increasing numbers of destitute children. Abandoned children were received and cared for in foundling hospitals and *dépôts pour enfants trouvés* (depots for foundling children). The traditional way of caring for abandoned infants was to send the infant to the country to a wet-nurse, and then to return the child to the institution for training in a trade when he was 5 or 6 (Forrest 1981: 124) but financial stringency ensured that the level of instruction remained very basic (Forrest 1981: 126).

Examination of these institutions disclosed disturbing evidence: the institutions were overcrowded, unsanitary and disease-ridden, staff were incompetent and several of the *enfants trouvés* doubled as detention and correction centres for juvenile offenders. It was not surprising that almost half of the infants died in their first year of life (Forrest 1981: 121-122). Tenon, a noted surgeon, pointed out the direct causal link between infant deaths and the system of wet-nursing. The lack of supervision of the system, fraud and abuse of

the system were believed to contribute to the high infant death rate. The plight of those who remained in the institutions was no better. Contagious diseases and infections caused the death of numerous infants while many of the infants admitted were themselves already diseased (Forrest 1981: 124-126).

The whole structure of the *enfants trouvés* seemed on the verge of collapse during the late 1700s. A scarcity of funds made the provision of the most basic requirements like food and clothing virtually impossible. Children were malnourished and many died. The state was unable to pay the wet-nurses, who had little alternative other than to return the babies to the already overcrowded institution. The conditions of these children were deplorable (Forrest 1981: 131). It was clear that institutionalisation did not provide the solution. An option which was subsequently examined was that of foster care under state supervision. The system proved more successful than placing the children in orphanages and was consequently given preference (Clark 1991: 289).

The persistent high infant death rate remained a sensitive issue which needed to be addressed. Government policy after 1871 encouraged mothers to keep their babies by revising the image of the unwed mother and child and by offering material aid. In 1874 the *loi Roussel* extended governmental supervision on wet-nursing in an attempt to ensure that the system was not abused or misapplied. Other factors responsible for the decline in the popularity of wet-nursing were the development of pasteurisation of milk and increased knowledge of paediatrics. By the 1890s the mortality rate of abandoned children was only slightly higher than that for other infants (Clark 1991: 289-290).

Another social problem with which children were to contend was abuse. Before the 1880s only abortion (more common in urban areas) and infanticide (generally confined to rural areas) were recognised as child abuse. The expansion to include physical and emotional cruelty as abuse were reflected in state legislation in 1889 and 1898. Institutions for the protection of such children were founded after the work of private philanthropic organisations between the 1860s and 1890s had brought the matter to the fore. Philanthropic agencies such as the *Patronage de l'Enfance et de l'Adolescence* (Support for children and adolescents) founded by Henri Rolle, the *Société pour l'Enfance Abandonnée et Coupable* (Society for abandoned and culpable children) established by Georges Bonjean (1879) and other private philanthropic organisations agitated for legislation to prevent child abuse, the exploitation of youth, vagrancy and prostitution. These reformers were not purely altruistic but acted in response to fears that delinquency

might lead to general social degradation (Clark 1991: 290; Forrest 1981: 7; Fuchs 1990: 270).

The most extensive legislation affecting abused or neglected children was that passed in 1889, alternatively called the *Law on the forfeiture of the right of parental authority* or the *Law for the protection of the moralement abandonnés* (full French title unavailable). By this law, incapable or abusive parents were stripped of their parental authority and the state assumed the duties and responsibilities of child-rearing in the interest of both the child and the state (Clark 1991: 270).

5.4 Children and their education

The revitalisation of the French education system could possibly be traced to 1762 when Jean-Jacques Rousseau's *Emile* was published (see 3: 5.1). The principles of neutrality, secularity and a system of education that followed the child's natural development embodied in this work, were so influential that they are still found in the current education system in France (Halls 1965: 14). These were also the principles embraced by the **Declaration on the Rights of Man and Citizen** (1789) - the preface to the Constitution drafted by the National Assembly (see 3: 5) - in which education was acknowledged as the right of all citizens (Heyward 1988: 3).

Under the *Ancien Régime* education - both elementary and secondary - was provided for and under the control of the Catholic Church and religious orders (Green 1990: 130). Unevenness between the education of the elites and the populace was evident from the start. Primary education provided by the *petites écoles* (little schools) was largely in the hands of the **Order of the Christian Brothers** and was available to all. The main purpose of these schools was to provide religious instruction (Heyward 1988: 3, 59, 61, 72). Secondary education was reserved for the élite. Initially the **Jesuit Order** were responsible for secondary education, but, afraid of the influence that the religious teachings could have on the elite of the nation who would one day hold office in the affairs of the state, the state ordered the expulsion of the Order in 1762. The **Collège Royal**, a royal institution for the sons of nobles, was subsequently to become the main provider of secondary education (Halls 1965: 15-16).

Prior to and in the early years of the Revolution, proposals for state control and improvement of education were submitted by various philosophers. These proposals reflected the aspirations of individual groups and ranged from proposals for egalitarian systems to those advocating education in keeping with social status. These proposals also dealt with suggestions pertaining to the degree of secular and religious influence in education (Green 1990: 140-141). However, amidst continual uprising and changes in government, the majority of these proposals never reached implementation, nonetheless, the guiding principles were to influence the later development of a national education system (Green 1990: 137-146).

Among the first acts of the revolutionaries were those aimed at dismantling the stronghold of the Church in education. In 1790 the establishment of the **Civil Constitution of the Clergy** caused the retirement of many of the clergy engaged in teaching and in 1792, the **Comité de l'Instruction Publique** (Committee for public instruction) abolished all ecclesiastical corporations - including religious schools. The state assumed complete control of all educational institutions during the following year and primary and secondary education became the responsibility of the various *communes* (Halls 1965: 17).

Napoleon, as emperor of the First Empire (1800-1814), was the first to lay down a lasting legal and administrative framework for national education with the foundation of an **Université** (1806) to supervise the entire education system. National curricula were standardised and a national system of examinations was established. The Church was readmitted into primary education with the proviso that the state could supervise its activities. The development of the public *lycée* (state secondary school) embodied the secular rationalist philosophy and provided secondary education for the more gifted pupils. Special schools, the *écoles d'application* (schools of application) which catered for training in occupations that ranged from teaching to agriculture and the *écoles contrales* (precursors of the technical schools) were established from 1793 onwards. Under Napoleon, legislation in 1808 stipulated that the basis of education was fidelity to the emperor and to the monarchy (Green 1990: 146-153; Halls 1965: 18).

Under the Bourgeoisie Monarchy the *loi Guizot* (1833) which established the pattern for primary schooling was passed. Under this law, all communes were obliged to open an elementary school in which only qualified teachers could teach. The passing of the 1850 *loi Falloux* helped re-establish the Church's influence in education allowing private secondary schooling, the inspection of state primary schools by the parish priest and the

appointment of teachers from religious orders (Halls 1965: 20-21). A further advance was made in 1867 when the *loi Duruy* provided for the education of girls and emphasised the teaching of science and technical subjects in secondary education (Halls 1965: 21).

The return of a Republican régime saw a renewal of revolutionary ideals. The complete secularism of state schools was enforced by the *loi Ferry* enacted in 1881-1882. Religious instruction on school premises was completely forbidden. The Catholics were infuriated and termed the secular schools *écoles sans Dieu* (schools without God) (Halls 1965: 76). The *loi Ferry* of 1881 also abolished all fees in state nursery and primary schools and having made education gratuitous, it was now possible to make it compulsory. This was accomplished by the *loi* of 1882 which stipulated that all children between 6 and 13 were to attend school. Legislation passed in 1904 prohibited members of all religious orders to undertake any form of teaching and private schools were to close within ten years. However, the outbreak of World War I forestalled the application of this measure (Halls 1965: 18-23).

Provided above is a cursory view of the development of the education system from the time of the Revolution. But how were the general populace affected by these events? What expectations did they have regarding the education of their children?

The fact that there was a discrepancy between the provision of education for the aristocracy and the proletariat did not seem to raise much public concern (Heyward 1988: 4) - an attitude which was reminiscent of the *Ancien Régime* which accepted that every person receive the level of education appropriate to his status in society (Halls 1965: 31). As pointed out, the educational system of France prior to Revolution was under the control of the Catholic church. During the tumultuous years of revolution while much planning but little provision for education was being made, the Church once again took responsibility for educating the youth of the nation by establishing parish schools. Where it was not possible to maintain these schools, Sunday schools - *écoles dominicales* - where the catechism and rudiments of reading were taught, were established (Barnard 1969: 5; Green 1990: 145).

In rural communities, "learning by doing" - vocational training - took place in the family. Peasants regarded formal education of little consequence bar that required in preparation for the first communion. In keeping with this attitude, the atmosphere of the communal or village schools resembled that of the traditional apprenticeship in the local community.

The official teacher - who commonly doubled as sexton or secretary to the mayor - could be assisted by the local tailor, shoemaker and others to supplement his teaching. The only requirement for appointment as a teacher between 1816 and 1833 was a *brevet de capacité* (letter of ability) which in no way guaranteed competency! During the 1850s a new class of professional teachers trained at *écoles normales* entered the teaching profession. However, in rural communities they responded to the demands of the peasantry and to avoid local uprising limited their instruction to the most basic literacy. The aspiration of the ruling classes to instill in the peasantry their moral and political values was thwarted (Heyward 1988: 71).

The urban proletariat - like their rural counterparts - wanted education to include vocational training and work experience. The reason for this attitude could possibly be attributed to the fact that there were very few jobs that required a primary education in the early industrial society (Heyward 1988: 210). By the 1840s the situation is reported to have got out of hand and many schools apparently resembled workhouses rather than schools (Heyward 1988: 211).

The years between 1830 and 1882 were particularly significant in the scholarisation of the working-class population. The *loi Guizot* of 1833 was an important step in bringing schooling to the masses as every community was obliged to establish its own primary school (Clark 1991: 284). Primary education for girls which had been given low priority in official circles and in peasant communities was supported by the *loi Duruy* of 1867 (which also gave a considerable boost to the schooling of the poor by helping the municipalities finance free schools) and by 1882 (as a result of the Ferry laws) education was both free and compulsory (Halls 1965: 77; Heyward 1988: 61-63; 288).

Not only were there changes in society's perception of the provision and nature of education for children in general, but also to be noted were changes in attitude towards the delinquent child - including the fact that his rehabilitation was seen to lie in his need for education.

5.5 The delinquent child

A survey of juvenile delinquency between the early 1800s and the early 1900s shows a marked change in social attitude from viewing the delinquent as fundamentally immoral and a threat to society to a belief that juveniles were victims of society in need of protection, education and reform (Fuchs 1990: 265). Delinquency was generally attributed to poverty, unemployment and overcrowding and the high rate of illegitimacy - 40% at the beginning of the nineteenth century (Fuchs 1990: 266).

As the social attitude towards delinquency progressively changed, so too did the definition of and approach towards dealing with delinquency. From the Restoration to the Second Republic (1815-1852) reformers believed the family to be the proper milieu in which to correct and reform the young offender. Paternal authority was afforded prime importance (Fuchs 1990: 267). From the 1830s delinquency was increasingly attributed to loose family ties and it was assumed that orphans and children from single-parent families were those most likely to become delinquent. In an effort to reverse the "negative" circumstances and provide a stable and sound environment, mothers were moralised and dual parent families were encouraged (Fuchs 1990: 267). Although parental care was the preferred method of dealing with juvenile delinquents, reformatories, prisons and other detention centres were available. In the *La Petite Roquette* (1836-1865), a juvenile prison in Paris, offenders were placed in seclusion around the clock. Boys between 6 and 13 were detained and given religious, academic and occupational training in isolation. The system was blamed for causing death, sickness and mental derangement. Around the 1840s new ideas and programmes were introduced - the *colonies agricoles*. These prison farm colonies were for boys between 8 and 20. In these institutions boys were taught morals, good habits, discipline, basic schooling and a trade. Legislation of 1859 made these colonies the preferred form of institutionalisation of delinquents (Fuchs 1990: 272-276).

By the Third Republic (1871-1914) delinquency was seen as a symptom of an unhealthy domestic environment and a major shift in the perceived role of the family in the development of children occurred. Rather than to try and moralise the family, reformers began to remove young offenders from the influence of the family and place them in institutions under close supervision of social workers, juvenile judges and other social service personnel (Fuchs 1990: 268). The goal was to re-educate the children through religious training, education and exercise. After 1875 the education of incarcerated youth became more systematic and the state assumed a greater role in administering institutions

for rehabilitation (Clark 1991: 288). One of the most well-known colonies was that at Mettray and in 1855 a special wing was added for boys from the upper and middle-classes. This reformatory also housed abandoned children (Fuchs 1990: 272-276).

Religious orders also established reform colonies for juvenile offenders - the *colonies industrielles* - (industrial colonies) common between 1870 and 1900. The founders of these colonies believed work meant discipline and in essence these establishments were more cost effective than the *colonies agricoles*. The reform of girls was almost entirely in religious hands and workshops, convents and penitentiary-like workhouses were established for delinquent girls. These girls, like their boy counterparts, received correctional and occupational education (Fuchs 1990: 272-276).

Legislation regarding juvenile delinquents can be traced to the Penal Code of 1810 which stipulated that juvenile offenders (youths under 16) were to be separated from adults in prison as were male and female (Clark 1991: 288). (Only in 1906 was minority status raised to 18.) Children under 13 were placed in protective custody with an appointed guardian who would be responsible for his moral education (Fuchs 1990: 268). Legislation in 1850 provided for the creation of *colonies pénitenciaires* and *colonies correctionnelles* - institutions in which delinquents would receive moral, religious and occupational education, while legislation in 1889 provided for children who it was believed might engage in delinquent behaviour because of the emotional, moral or physical neglect or deprivation. Conditions under which parents could be stripped of their parental rights were also defined in this legislation. Legislation of this kind showed a change in attitude from wanting to protect society from the delinquent to protecting the delinquent from society (Fuchs 1990: 269-270).

5.6 Summary

The Revolution and its **Declaration of the Rights of Man and Citizen** set noble ideals as goals and at the same time raised the expectations of the masses. It is not the purpose of this dissertation to outline the complete social history of France to determine whether these ideals were realised or not or how the personal aspirations of leaders and reformers were to influence the provision for and interpretation of social and legal policies - much of this has been alluded to in the overview provided above. Society did indeed heed the call to improve the plight of the child, but it would appear that in many instances, the response

was frustrated by enduring tradition, ethical considerations and bureaucracy.

In conclusion it may be noted that certain issues which appear to be unique to the French situation have emerged. An aspect which has played a major role in the activities of the French nation and the nature of the provision for her youth has been the continual but fluctuating interchange between state and church and the progression towards secularisation. It would seem too, that the motives of reformers have rested rather with socialistic principles than with humanitarian or altruistic ones. However, it can hardly be disputed that the circumstances of children since the Revolution have changed - it is hoped for the better.

6 CONCLUSION

The purpose of this chapter has been to gather information on the efforts initiated by society - as individuals or as the state - to address the prominent needs of children. A review of child labour, the provision of compulsory education and the strategy for addressing the needs of the destitute and delinquent in the three countries, England, the United States of America and France has been attempted. That each nation has unique origins and circumstances cannot be disputed. It is this fact which has made their interpretation of and their individual provision for the rights of their citizens - including children - unique.

The welfare rights of the child have been addressed through legislation in all three countries, but the consideration of self-determination rights did not feature to any great extent prior to World War I. In the next chapter, those events, charters and declarations that were precursors to establishing or conceding children the right of self-determination will be reviewed. The core of the following chapter is the United Nations **Convention on the Rights of the Child** and the dominant principles of this convention.

**THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD: THE
CULMINATION OF EFFORTS TO ADDRESS
THE NEEDS OF CHILDREN**

*Youth comes to us wanting to know what we propose to do
about a society that hurts so many of them.*

(Franklin Delano Roosevelt 1936)

CHAPTER 4

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: THE CULMINATION OF EFFORTS TO ADDRESS THE NEEDS OF CHILDREN

1 INTRODUCTION

The previous chapter explored the attempts of individuals, social organisations and the states of three different countries - England, the United States of America and France - to intercede on behalf of the child. These countries were selected because each had pioneered the establishment of a human rights culture (see 3:1).

The early child advocacy campaigns outlined in the previous chapter could be described as the precursors to the children's rights movements of the twentieth century. Underlying these movements was a change in the conceptualisation of children - a progression from affording children status congruous with that of property to treating them as distinct individuals worthy of respect (Hart 1982: 4; see 3: 3.1, 3: 4.1 & 3: 5.1). Influencing factors included changes in attitude towards child-bearing and child-rearing, economics and industrialisation, state interest in protecting children and the development of juvenile court systems as well as the development of the social welfare sciences and related professions (Hart 1991: 54).

The majority of the child advocates were from the middle and upper social classes while the children for whom they interceded were predominantly from the lower social classes (see 3: 3.6 & 3: 4.6). As time passed, protection was extended to children in general (see 3: 3.5; 3: 4.3 & 3: 5.4). Although many child advocates were motivated by charitable or altruistic considerations, intervention invariably stemmed from subjective or surreptitious reasons. Examples include the widespread concern that destitute and delinquent children would contaminate society and undermine social stability. A further example is the rivalry between industrial entrepreneurs who, under the guise of lobbying for the rights of children furthered their own interests (see 3: 3.4; 3: 4.3 & 3: 5.3).

Certain generalisations can be drawn from the data gathered in Chapter 3. The initial issues addressed by child advocates involved the welfare of the child. It was recognised that the child needed basic care in the form of food, clothing and shelter to preserve life and health. Next it became evident that protection from exploitation (e.g. premature labour) was required. At the same time society recognised the importance of educating its youth - regardless of social status. Socially responsible and economically useful individuals were needed to supply a skilled and differentiated labour force. It was realised that such individuals could not be provided while the youth were employed in mines and factories and were prevented from attending school (Boyden 1989: 186).

To accomplish these objectives, provisionary and preventative measures needed to be taken. Concerned individuals aroused public awareness and support. Social institutions that could deal with these issues were established (e.g. houses of refuge, reformatories and associations committed to promoting the interests of children). State intervention was also forthcoming - although not necessarily endorsed by society at large (see 3: 3.3 & 3: 5.2). The state provided legislation (e.g. compulsory school attendance and child labour legislation) which it believed would improve the circumstances of children. Legislation that guaranteed the existence of structures in support of these objectives (e.g. reformatories, juvenile court systems, schools and the recognition of and provision for foster care) was also passed.

The role of schools to protect and provide for children cannot be underestimated. Social institutions (reform schools, industrial schools, workhouses) and the state (compulsory school attendance legislation) used schools to achieve certain objectives. On the one hand the school provided a safe haven from an exploitive and malevolent society while on the other, delinquent, deviant and immigrant children (or children of social minorities) were taught (or instilled with) an acceptance of and adherence to middle-class values of the dominant social group. It was hoped that these measures would ensure social conformity, egalitarianism and hence, social stability. Mass educational systems brought about social reconstruction and the education of the youth was placed under state control with the purpose of furthering national interests (Soysal & Strang 1989: 279).

Nonetheless, the fact remains: these were the efforts of individual countries to address the needs of children - the world community at large had not yet formulated a unified strategy to deal with issues affecting children. It is the purpose of this chapter to investigate this particular issue - to provide an indication of the events which lead to the establishment of

an internationally accepted or recognised *Bill of Rights* for children. The United Nations **Convention on the Rights of the Child** represents the culmination of such efforts. Further assignments of this chapter are to indicate the highlights of the convention, to identify the predominant themes of the accord, to comment on the articles dealing with education and related issues and to investigate the implications of the implementation of these principles.

2 A CONCISE BACKGROUND OF THE PRESUPPOSITIONS AND EVENTS LEADING TO THE DRAFTING OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Parents, it is assumed, instinctively protect and provide for their children. However, when the extent of child abuse and neglect is considered, there can be little doubt that intervention on behalf of children is essential (Cohen 1980: 3).

A particular means of ensuring just treatment for children is to appeal to the ethics of human rights of which the basis is the human person. It then follows that human rights standards extend to children as well (Coughlin 1973: 22). When a human rights attitude to children's rights is adopted, it needs to be remembered that the declarations and conventions are not saying that children *should* be given certain rights, they are saying that children already *have* them (Cohen 1980: 29).

The issue of human rights - and thus also children's rights - is no longer confined to individual nations or states as indicated in the previous chapter, it has now entered the global arena (Ennew & Milne 1989: 1) - a fact which is evidenced by the profusion of **United Nations** declarations and conventions in which human rights feature.

2.1 Human rights, children's rights and social obligation

Historically, rights in society had been ascribed to adults only (Worsfold 1974: 142; see 2: 5.3). It has already been suggested (see 2: 5.2) that it was Rousseau's assumption of the inherent rectitude of the child that served as the impetus for child-saving campaigns of the late 1800s. Takanashi (1978: 13) suggests further that as children became the focus of

social reform, society needed to articulate its obligations to children. These obligations were perceived as the rights of children.

It is customary to think of rights in association with their related responsibilities (see 2: 3.3.2). For example: in terms of a child's welfare rights, it is assumed that the parents will assure these rights until such time as the child is able to assume responsibility for himself. In the event of the parent being unable or unwilling to fulfil his responsibility, the state, together with other social institutions and supported by legislation, act in *parens patria* to protect the child. In addition, it can be deduced that a triadic reciprocating and interacting system is in place: children, parents and society. Furthermore, all three components have both rights and responsibilities, and only if each component adequately fulfils its responsibilities can the other achieve their rights. Stability and harmony among these members of the triad depends on the satisfactory fulfilment of responsibilities (Caldwell 1989: 5, 7; Cohen 1980: 7).

As the social climate became progressively more tolerant of and sympathetic towards children, parents, society and the state were expected to manifest this change of attitude towards children. Commitment towards and attempts at enforcement of these ideals became ensconced in the objectives of specially established organisations devoted to the needs of children, in legislation as well as in international declarations and conventions. These precursors to the most recent contribution in the realm of international children's rights, the **United Nations Convention on the Rights of the Child**, will be briefly discussed in the following section.

2.2 Precursors to the convention

The contribution of child advocacy movements traced in the previous chapter need no further explanation. The impetus for extending efforts to establish an enforceable *Bill of Rights* for children was the proclamation of the **International Year of the Child** in 1979 by the **United Nations General Assembly** (Hart 1982: 1; see 2: 5.5) and the response that this elicited.

In commemoration of the millions of children Poland had seen die and orphaned during war, the government of Poland submitted a proposal to the **United Nations Commission on Human Rights** in 1978 to constitute a convention on children's rights to coincide with

the **International Year of the Child** (1979) dedicated to the happiness of children throughout the world (Suchodolski 1979: 45). The draft was based on principles already unanimously agreed upon in the United Nations General Assembly's **Declaration of the Rights of the Child** (1959) [see 2: 5.5] in the hope that adoption would be speedy. However, this was not to be. A working committee was established to review and revise the text and in 1989 the **United Nations General Assembly** adopted Resolution 44/25 - the **United Nations Convention on the Rights of the Child**. This document of 54 articles constitutes the first international legal instrument which specifies and endorses the protection of the child's human rights and represents the culmination of various actions aimed at protecting the child and the rights of the child (Cantwell 1992: 207-208).

A number of precursors are acknowledged in the convention. In 1922, Eglantyn Jegg, founder of the **Save the Children Fund** (1919) drafted the **Charter of the Rights of the Child** after her involvement with relief work among Balkan children during the First World War. This charter was subsequently adopted by the League of Nations in 1924 as the **Geneva Declaration on the Rights of the Child** (see 2: 5.5). Basic child welfare and protection principles were spelt out in this document (Levin 1988: 40). In 1948 a slightly expanded version containing seven principles was included in the United Nations **Universal Declaration of Human Rights**. The **United Nations General Assembly's** ten point **Declaration of the Rights of the Child** announcing general principles for the care and protection of children was presented in 1959 (Cantwell 1992: 207; see 2: 5.5). However, the declaration does not mention the word *right* except in the title, preamble and the non-discrimination clause but speaks rather of the child's *entitlements* (Bennett 1987: 18-19).

Other influential events and documents were the **UNESCO Convention against Discrimination in Education** (1960) - a very broad treaty of which the purpose is to eliminate discrimination in public education on all grounds (Van Beuren 1993: 245), the **White House Conference on Children** (1970) and the **Declaration of the Psychological Rights of the Child** (1979) developed by an international body of psychologists, the **International School Psychology Committee** (Bennett 1987: 23; Hart 1982: 8-10; Hart 1991: 55). The above-mentioned documents were predominantly protection and nurturance orientated.

On 26 January 1990, the first day that the **Convention on the Rights of the Child** was opened for signature, 61 countries became signatories of the convention and by 2

September 1990 over 20 ratifications had been received. The convention officially entered into force. Those states which accept the convention are legally accountable for their action towards children. By September 1993, the convention had been ratified by 147 nation states (Leach 1994: 207).

3 SYNOPSIS OF AND COMMENTS ON THE UNDERLYING PRINCIPLES OF THE CONVENTION

Although only certain of the articles of the **Convention on the Rights of the Child** will be referred to or discussed in the next section of this chapter, it was decided to provide the convention in unabridged form as **Appendix 1: Convention on the Rights of the Child** for the sake of completeness. The reader is thus asked to refer to **Appendix 1** when articles of the convention are cited.

When the various articles of the **Convention on the Rights of the Child** are examined closely, certain underlying principles basic to the convention can be identified. These principles influence the interpretation of all the articles - also those in which the child's right to education is addressed. A short discussion of these principles follows.

3.1 The status of children as persons

According to *Article 1*, the child is defined in the convention as a person under the age of 18, unless national laws fix an earlier age of majority. The age of majority is thus unequivocally established. However, in the preamble it is stated that the child is *entitled to protection before and after birth*. A question which seems to follow logically, is, when is it that a child is first considered to be a "human"? No explicit stand is taken on this issue and the matter is thus left open to interpretation by each individual nation (Edmonds 1992: 206).

Probably the most significant aspect of the convention is the international consensus reached that children are indeed persons, and as such, entitled to respect and protection (Hart & Pavlovic 1991: 349). In *Articles 6, 7 and 8* it is asserted that children have a right to life, to a name, nationality and the preservation of family ties. In these articles, the

human dignity of the child is focused upon. The convention thus recognises that children have the rights that humans possess, but in addition, because children are dependent, they have the right which their minority necessitates (**Appendix 1**: Preamble; Edmonds 1992: 205) - the recognition that special care needs to be taken to protect their rights (Cantwell 1992: 208).

3.2 Non-discrimination

Non-discrimination on all grounds is an important principle of the convention and states are advised to ensure that each child enjoys full rights without discrimination or distinction of any kind. This fact is clearly enunciated in the preamble to the convention as well as in *Article 2*.

3.3 Minimum standards for children's rights

The minimum standard of acceptable treatment of children is proclaimed in *Article 3*. *Article 4* also stipulates that states should afford children their rights to the ... *maximum extent of their available resources* ... while *Article 41* aims at guaranteeing the child the highest existing national or international legal standards for rights even if lower standards are encoded in the convention.

The terms stating the minimum standards are broad and scope is left to accommodate cultural and ethnic diversity. It could be argued that to ensure universality and the transcendence of social difference, human rights terminology should be broad and focus on the most fundamental of the options (Cohen 1980: 141). The integration of disparate perspectives on children's rights is believed to be possible when the focus is on the *dignity* of the child (Melton 1991: 66).

3.4 Parent, family and state obligations

The principle responsibility for children in all societies rests with the parents and the family and this central role is recognised in the convention in *Article 5*. The obligation of the state to enable them to carry out these duties is also acknowledged.

In Articles 7 and 8, a sense of belonging to a family as fundamental to mental health and optimal adaptation in life is endorsed. This sentiment is also clearly stated in the preamble which reads ... *convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children ... and ... recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.* In Article 27 the parent's responsibility to provide adequate conditions for the child's development is highlighted.

As Brassard & Hyman (1991: 377) indicate, although greater child involvement and participation in decision-making [see 4: 3.5] is advocated, this does not endorse less parental involvement. *Parental prerogative and judgement about family welfare and the best interests of the child supports parental decision-making regardless of youth preference in school enrolment, association with peers, use of illegal substances and related decisions. A balance among the rights and interests of all involved is the primary goal.*

3.5 Protection, provision and participation

The three encompassing components of the convention are the child's right to provision, protection and participation (Fernekes 1992: 203).

The early child advocacy movements had focused first on children's physical and later on their psychological needs and society's obligation to provide for and protect children i.e. nurturance or welfare rights. The convention's acknowledgment of the *dignity* of children [see 4: 3.1] focuses attention on the child as a rational, autonomous individual. The consequent correlative is that children should be afforded *participation* or self-determination rights i.e. choice rights.

The extension of self-determination rights to children is entrenched in the convention in various articles, viz. Articles 12 (the right to be heard), 13 (freedom of expression), 14 (freedom of thought, conscience and religion), 15 (freedom of association), and 16 (the right to privacy). The extension of participation rights is more controversial than the extension of welfare rights (Feshbach & Feshbach 1978: 3). In the past decades, child advocates have generally adopted one of three stances to participation rights (Hart 1991: 56). In short these

positions propose that:

- children should enjoy the same rights as adults;
- there should be a balance between welfare and participation rights;
- only those rights that can be empirically proven beyond the capacity of the child should be denied.

Issues to be considered when choosing among these options are:

- the vulnerability of children which, if disregarded, could lead to irreparable harm (psychological and physical) in the long-term;
- protection that prolongs dependence and powerlessness conflicts with long-term objectives for development;
- awarding children adult rights is likely to increase the responsibilities (and awaken the animosity) of parents;
- awarding children adult rights could be in conflict with developmental readiness and endanger the long-term best interests of children (Hart 1991:56).

Arguments in favour of awarding children the right to participation or self-determination include:

- involvement in decision-making increases commitment to the decisions made and heightens investment in the outcome;
- participation in decision-making develops social responsibility (Kohler 1971: 42).

According to Kaufman (cited in Brassard & Hyman 1991: 377), by the age of 14 most children have attained full adult cognitive development and lack only the life experience that adults have when it comes to decision-making ability. This lack of experience leaves them vulnerable to exploitation by others and to poor judgment on their part and this is why adult guidance is desirable. It follows that it could be said that children have a right to guidance from models whose love and concern are expressed in ways that lead to self-reliance, self-discipline and self-actualization (Kohler 1971: 42).

3.6 Cultural identity and national values

The convention indisputably acknowledges cultural diversity and calls for cultural democracy and cultural integrity for all children (Kobus 1992: 224-225). According to *Article 29*, state parties agree that the education of the child be directed at fostering

cultural identity and national values and a respect for civilisations different from his own. It is further contended that the child be prepared for responsible life in a free society in which ethnic groups and persons of indigenous origin are understood in a spirit of tolerance, friendship and peace. *Article 30* reiterates the child's right to enjoy *inter alia* his or her own culture.

3.7 Summary

The underlying principles discussed in this section form the background against which the articles of the convention should be interpreted.

It could be argued that if rights are to be meaningful, they should be expressed precisely enough to spell out what others must or must not do. Vagueness of terminology leaves the interpretation of the right to the discretion of the interpreter who in turn then has control over deciding the extent of his obligation (Cohen 1980: 20-21; 34-36). *Education, minimum standards, national values* are such terms. Nonetheless, it is probably impossible to stipulate each detail of every right and so subsequently eliminate discretion entirely. Certain features of the convention do tend to be vague, but it is possibly this characteristic which facilitates universal application of the right.

In the next section three fundamental themes central to the convention will be examined.

4 PREDOMINANT THEMES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The correlation between rights and duties is once again alluded to in the foregoing sections. Children, in view of their minority and their dependent status, are less able than adults to ensure the enforcement of their rights and it subsequently becomes the task of adults to ensure the realisation of the rights of the child as well as to empower the child to claim society's respect for and assistance in the enforcement of his rights (Levin 1988: 41).

The three predominant themes guiding the balance between the rights and responsibilities of parents, society and the child in their triadic interrelationship are the *best interest*,

evolving capacities and changing developmental stages. The *best interests* of the child is the criterion against which all of the conditions and treatment of children are to be tested (see Articles 3, 9, 18 and 21). Direction and enforcement of the child's rights should be applied in a manner consistent with the *evolving capacities of the child* (Article 5, 12 and 14); and at the same time, the convention emphasises respect for the changing *developmental stages* of the child (Articles 12 and 29) (Hart & Pavlovic 1991: 351).

4.1 "Best interests"

Article 3 stipulates that *In all actions concerning children ... the best interests of the child shall be a primary consideration.* (Also see Articles 9, 18 and 21). On paper this proviso appears admirable, but in real life, application is complex. Moonkin's argument (1978: 163-164) probably best sums up the main difficulties. First he suggests that what is best for an individual child or for children in general is usually indeterminate or speculative. What is *best* is not an aspect which can be demonstrated or scientifically verified. Instead it is a matter, fundamentally, of values. A further concern which he raises is: who gets to decide what is best for the child? Should the decision-maker be concerned primarily with the child's immediate gratification or with his long-term economic productivity, spiritual and religious training, interpersonal relationships or whatever other goal may be envisaged?

Applied to education in broad terms, the *best interests* are probably served by education guided by the long-term interests of the child; education which demands more than a succession of unrelated course work; education to equip the child to fit society's occupational needs (Hart & Pavlovic 1991: 351) balanced by personal ability, talent and inclination.

Acting in the *best interests* of the child should not reflect a "benevolent authoritarianism". Acting in a child's best interests presupposes the child's participation in the decisions affecting him - not exclusion (Leach 1994: 208; Worsfold 1974: 155).

4.2 "Evolving capacity"

According to Article 5 of the convention *State Parties shall respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child*. Similar stipulations are reiterated in Articles 12 and 14 where the concepts *maturity* and *evolving capacities* of the child feature.

Basic to this pronouncement is the thought that age-based requirements should be rejected as age and maturity or competence are not necessarily correlated (Moonkin 1978: 163). *Children* is not a definitive group. Children grow and as they grow they mature in judgment. Once competent they should have the right to make decisions.

The expectation is set that the child will develop increasingly toward the capacity to independently determine which of and how his rights should be exercised (Hart & Pavlovic 1991: 351). There is thus a shift of balance throughout the developmental period from external control and guidance to mediation towards autonomy (Hart 1991: 56).

4.3 "Developmental stages"

The articles of the convention in which this theme is recurrent are Articles 12 and 29 while the theme is alluded to in Articles 13, 14, 15, 16, 17. The emphasis of the convention on the *evolving capacities* of the child sets the expectation that the child will increasingly be empowered to direct his own development. Children are perceived as *being* and as *becoming* persons. As *being* persons they are entitled to human rights, but as *becoming* persons, they are entitled to enjoy these rights only under governance of responsible adults (Hart & Pavlovic 1991: 352-353).

Developmental psychologists agree that a child matures through a succession of developmental stages, each successive stage conferring additional or transformed competencies. The developmental stages conceptualised by Piaget (1958) for intelligence and Kohlberg (1966; see also 1981) for moral development for example suggest the competencies that children might be expected to exhibit at different, somewhat predictable and verifiable points in their lives (Hart 1982: 12). A knowledge of the stages of child development makes the child's behaviour more - but never completely - predictable and manageable (Baumrind 1978: 182).

Rights entail responsibilities. Likewise, the degree of responsibility which a child can manage is related to his stage of development. It would be inappropriate to demand of children responsibility while simultaneously denying them the age-appropriate freedom to be non-responsible. To treat a child from an adult perspective is to treat him unjustly from his own viewpoint. These "inequalities" between adult and child do not result from adult oppression, but from the laws of nature and constitute a biological fact (Baumrind 1978: 183-184).

4.4 Summary

A positive ideology of children as both *being* and *becoming* persons is needed to guide treatment of and attitudes towards children. The *best interest* of the child and respect for the *evolving capacities* of the child are guiding principles in this regard (Hart & Prasse 1991: 409). By taking a developmentally sensitive approach to children's rights ensures both that those interests essential to the dignity of human beings in general are recognised for children and that, in view of the dependency of children, special rights are available so that such interests are in fact vindicated (Melton 1991: 67).

The privileges, responsibilities and rewards of adults and children are not equal - they are reciprocal and reflect the different competencies. At each childhood stage the duties and rights of parents and children differ, finally approximating the balance which characterises an adult-adult relationship (Baumrind 1978: 193). Although the evolving capacity and maturity of the child are primary criteria of the convention for determining the amount of freedom awarded to children, the fact remains, there is no clear, quantifiable gauge whereby evolving capacity or maturity can be judged. These concepts are, as with the *best interests*, open to subjective interpretation.

In the ensuing section those articles integral to the articles dealing with education as well as the express education articles are examined. At the same time, the influence of the predominant themes discussed above on the interpretation and implementation of these articles will also be considered.

5 THE CONVENTION ON THE RIGHTS OF THE CHILD AND THE PROVISION FOR EDUCATION

Education, in some form or other, has taken place in all civilizations from early on. An articulation of the right to education however, has only emerged relatively recently. The **Declaration of the Rights of the Child** in 1924 omitted any express reference to education and it was the **Universal Declaration of Human Rights** (1948) and the United Nations **Declaration of the Rights of the Child** (1959) which first endorsed children's right to an education [Van Bueren 1992: 214].

5.1 Articles integral to education

The **Convention on the Rights of the Child** devotes two of its 54 articles to the child's right to education while other articles provide a framework within which this commitment is to be realized. The focus of this section falls on *Articles 28* and *29* but brief reference will be made to those articles related to the education articles.

According to *Article 2*, the *freedom from discrimination* article, it is suggested that all the rights of the convention should apply to all children without exception and the state has a responsibility to ensure that each child enjoys full rights without discrimination or distinction of any kind.

Article 18 addresses parental responsibilities. According to this article, parents are primarily responsible for the upbringing and socialisation of their children. In addition, the state assumes responsibility to assist parents and legal guardians in child-rearing and undertakes to ensure the development of child-care institutions.

Provision is made for disabled children in *Article 23* which states that disabled children have the right to special care and training which will enable them to achieve self-reliance so that they might live a full and active life in society.

The opportunity for leisure and recreation is provided for in *Article 31* that proposes that all children are entitled to have time to rest and play and to enjoy the opportunity to participate in cultural and artistic activities. The importance of those activities which provide for the child's all-round development is recognised. In the early years, education

and play are synonymous and play has often been described as the work of children. Educationists have underscored the significance of play and have emphasised the relation between play and the development of the child in totality. The role of play in inculcating culture (see *Article 29*) is also significant (Brassard & Hyman 1991: 373; Suchodolski 1979: 39-40).

Article 32 addresses the issue of child labour. According to this article, states undertake to protect the child from economic exploitation and work that may interfere with education or be harmful to the child's well-being and health.

5.2 The education articles

It has already been suggested (see 4: 5.1) that the interpretation and implementation of the mandates of the two *education articles* are fundamentally affected by the essence of the articles referred to in the previous section. The articles to be discussed below must also be interpreted against the background of the predominant themes of the convention discussed in 4: 4. However, each of the *education articles* has its own unique pronouncements that need to be examined individually.

5.2.1 Article 28 and its implications

Although each mandate of the article is significant and several pertinent features can be identified, only selected aspects of the article which are considered to have a bearing on this dissertation and their implications for implementation will be discussed.

State Parties recognise the right of the child to education ...

To claim a right to education is to claim that an individual cannot provide for his own education and that if he does not receive education, he is liable to sustain substantial harm. If this stance is adopted, the claim to education is justified on the grounds that the right to education is a welfare right. Further, if an individual were to receive no education, his dignity (see 4: 3.1) would be harmed (Wringe 1981: 139; 145).

In practice, if the child has a right to education, it follows *inter alia* that the state should:

- provide schools;
- appoint qualified teachers to staff these schools;
- equip the schools with the necessary materials;
- ensure that children have the opportunity to attend school.

If children are required to attend school, then it is incumbent upon society to provide a context that will promote the intellectual and personal growth of the child (Bikson 1978: 82) and to give credibility to its commitment to supporting the child's right to education, the state should enforce compulsory education and school attendance laws (Prasse 1991: 361).

... with a view to achieving this right progressively and on the basis of equal opportunity, ...

The implication of this provision is the abolition of all forms of discrimination - whether pertaining to the nature of the child or the actual, physical provision of education (see *Article 2*). All children regardless of disability, race, origin, sex, nationality should enjoy equal educational opportunities.

... they shall, in particular: a) make primary education compulsory and available free to all; ...

Elementary education should provide the basis for subsequent development (Suchodolski 1979: 40). The interpretation of what is meant by "primary education" is left to the discretion of individual states and could vary from teaching basic reading, writing and calculating skills, to preparing the child for participation in a complex socio-cultural and socio-economic environment. Through primary education, children should be educated to fulfil a meaningful role in society but at the same time to deepen his own personality in view of achieving self-fulfilment (Suchodolski 1979: 40-41).

In view of the fact that education is to be free, the state is obliged to develop and institute a system of public education accessible to each child of the state. The proviso is closely linked to "equal opportunity" - non-discrimination - discussed above, for if education were not free, it could not be open to all (Volio 1979: 25).

... e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates ...

Measures which the state (as provider of education) and society (as the milieu in which education is to occur) could enforce to encourage regular attendance could include *inter alia*:

- compulsory attendance legislation;
- the creation of a school atmosphere which contributes to education (a learning culture);
- the presentation of appropriate and pertinent curricula;
- adequate preparation of scholars prior to compulsory school attendance;
- the employment of qualified staff and appropriate teaching materials.

... State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention...

The crucial aspect of this section of the article, is that discipline be administered consistent with the **dignity** of the child. It needs to be remembered that one of the overriding principles of the convention is the recognition of the child's human dignity (see 4: 3.1). *Article 19* requires that the child be protected from all forms of physical or mental violence, injury or abuse, while *Article 37* states that no child is to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

It would appear that the prerogative to pass legislation prohibiting corporal punishment in sympathy with this section of the article, lies with individual states committed to this convention.

... State Parties shall promote and encourage international co-operation in matters relating to education ...

In the introduction to section 2.1 of this chapter, it was mentioned that the issue of children's rights has entered the global arena. The assignment volunteered by this section

of the article reiterates this sentiment. In the light of the prevailing inequality in the provision of education, it could be argued that the convention is addressing this particular issue in an attempt to promote equality among all children of all nations. The presumed objective is the upliftment of children in underprivileged and developing countries.

In essence, *Article 28* establishes the child's right to education, the state's (but also society's) obligation in this regard, and at the same time ensures respect for the dignity of each child.

5.2.2 Article 29 and its implications

The focus of *Article 29* is on the establishment of qualitative goals for educational programmes and on protecting the establishment of non-public schools that comply with the goals specified in this and the previous article on education.

State Parties agree that education of the child shall be directed to: a) the development of the child's personality, talents and mental and physical abilities to their fullest potential ...

What is meant by the "fullest potential" is certainly beyond the acquisition of basic skills. This point supports holistic development and progress toward autonomy. It envisages opportunity for responsible decision-making. What is envisaged is an education programme that respects the dignity of children, provides for their evolving capacities and respects, seeks and incorporates their point of view [Prasse 1991: 363].

... The development of respect for human rights ...; respect for the child's parents, his or her own cultural identity, language and values ... preparation of the child for responsible life in a free society ... respect for the natural environment ...

These mandates reflect the desired values and norms that children are required to cultivate. Probably the most pertinent aspect to arise from this section is the development of "respect". In this regard, this mandate applies not only to children, but to adults as well. Adults, as the role models of children, should themselves reflect an attitude of respect

toward the issues referred to [Kohler 1971: 43].

*... the liberty of individuals and bodies to establish and direct
educational institutions ...*

This section of the article allows for the establishment of non-public educational institutions - *inter alia* private, religious, and secular schools - which conform to the mandates contained in *Article 29*. Seen in conjunction with *Article 30* in which minority groups are granted the right to enjoy their own culture, religion and language, this section of the article ensures that these groups are able to exercise that right by educating their children in a milieu that reflects the essence of their particular outlook.

5.3 Summary

Education serves a multitude of important functions. Education is central to ensuring a person's ability to conceive life-fulfilling wants and to satisfy them; and schools transmit those values that ensure that children will become minimally adequate citizens in society [Brassard & Hyman 1991: 371].

Although the child's right to education is seldom questioned, the agreement about what that education should provide and what its end result should be is less clear. Who are schools most obliged to serve - children, parents or society? [Brassard & Hyman 1991: 376]. How should the term "primary education" be interpreted? Is it appropriate that various nation states could each have their own particular interpretation of the concept? It could also be asked whether current school programmes and procedures generally inhibit critical thinking and autonomous decision-making. Is the alleged tediousness and irrelevance of curricula directly related to high dropout rates? [see 4: 5.2].

The implementation of the mandates of these articles is undoubtedly dependent on statutory law. Yet legislation, although imperative to ensure compliance, is insufficient to ensure quality of compliance or to guarantee the degree of compliance. A prerequisite for optimum support of the mandates seems to be a positive ideology of the child. Responsible educational aims and practices can only be reliably assured if they are consistent with and measured against a *positive ideology*. Adult attitudes should reflect respect for the dignity of the child as a *becoming* being. This would be reflected in encouraging and acknowledging

children's participation and self-determination rights as both issues are central to the concept of dignity [Prasse 1991: 363, 367].

Education towards responsible autonomy should be envisaged. It would seem that the translation of Maslow's hierarchy of needs (1970) into educational objectives could provide a guideline according to which educational opportunities could be structured (see 2: 3.3.4). This would require that schools be physically comfortable and safe (physiological needs); that social support and the establishment of meaningful relationships between children, parents and society be established (security); that students successfully develop and apply competencies that contribute to the quality of their lives and the lives of others (affiliation). Children must be deliberately and systematically encouraged toward choice-making at higher levels of complexity and consequence in preparation for full participation in society (esteem and self-actualisation) (Hart & Prasse 1991: 410).

Education must not produce basic skills only, but also competencies and academic excellence. It must empower persons to direct their own lives, to work constructively with other towards a responsible goal [Hart & Prasse 1991: 411].

It is suggested by the aforementioned as well as by the discussion in 4: 3.7 that certain aspects of individual articles of the convention are open to diverse interpretation. This is because the underlying principles and themes of the convention are based on concepts that are difficult to qualify categorically. On the other hand, procedures for the enforcement and implementation of the convention are clearly stipulated by specific articles of the convention.

6 ENFORCEMENT AND IMPLEMENTATION OF THE CONVENTION

Articles 43, 44 and 45 are the framework according to which enforcement and implementation of the convention can be assured by those states who are signatories to the convention. *Article 43* provides for the establishment of a **Committee on the Rights of the Child** whose task it is to examine the progress made by states in achieving their obligations under the convention. *Article 44* requires that states submit reports to the committee on measures adopted to give effect to the mandates of the convention. The states are obliged to give wide publicity to the reports. This in itself should act as an incentive to ensure

commitment to acting in the interests of the child and for influencing changes in governmental children's rights policy (Edmonds 1992: 206).

Article 45 makes provision for the contribution of the **UNICEF** (see 1: 1.1) towards the effective implementation of the convention and to encourage international co-operation. Edmonds (1992: 206) points out that other monitoring bodies include the **Committee on the Rights of the Child, Amnesty International and Human Rights Watch**. These organisations use public pressure to discourage human rights violation, resolve human rights violations through mediation and persuasion, investigate human rights abuses, and generally encourage international co-operation in a bid to help nations honour their commitments to the convention.

7 SUMMARY

It has become a common platitude to state that children are a nation's most precious resource. The mere statement of this truism is however not to affirm that adults necessarily act in keeping with the sentiment. Adult attitudes toward children are a product of their convictions; their basic assumptions of childhood. In many instances, remediation of these assumptions is required (Aiken & LaFollette 1980: 91-93).

Respect for the dignity of children is an ethical obligation, but it is also sound public policy. It could be conjectured that if there was respect for children, there would be a pronounced decline in the prevailing social atrocity of child neglect and abuse (Melton 1991: 68). Undoubtedly the **Convention on the Rights of the Child** is a significant catalyst for improving the status of children. When the long-held perception of children as the possessions of their parents who have no say in matters - even those that affect them - is compared with the tone of the convention, it is clear that the convention has done much to attempt to "liberate" the child. The convention strives to ensure that all children are given the opportunity to develop their capacities to the fullest and to become active participants in their societies. Through the convention adult society is made aware of its responsibility to safeguard children's survival, development, protection and participation. In this way the convention can do much to change the way adults view and treat children. Adults should understand that these are rights that every child has and that these rights are not subject to the whim of charity (Miljeteig-Olssen 1992: 216).

An effort has to be made to balance children's rights of participation and self-determination with their rights to nurturance and protection. There is a precarious balance between the rights of children to choose their own paths through life, the rights of parents to determine the paths taken and the rights of society to provide optional paths and to monitor the ways chosen by the parents and children (Brassard & Hyman 1991: 374-375; see 2: 2.1).

In the next chapter the evolution of children's rights movements in Africa will be highlighted. Reference will again be made to the **Convention on the Rights of the Child** as it will be necessary to review the convention from an African perspective.

**CHILDREN'S RIGHTS MOVEMENTS AND THE
ASSOCIATED DOCUMENTS FOR THE
PROTECTION OF THE RIGHTS OF THE
CHILD IN AFRICA**

*At the Southern tip of the continent of Africa, a rich reward is in the making,
an invaluable gift is in preparation ... it will and must be measured by the
happiness and welfare of the children, at once the most vulnerable
citizens in any society and the greatest of our treasures.*

(Nelson Mandela 1993)

CHAPTER 5

CHILDREN'S RIGHTS MOVEMENTS AND THE ASSOCIATED DOCUMENTS FOR THE PROTECTION OF THE RIGHTS OF THE CHILD IN AFRICA

1 INTRODUCTION

In the past fifty years the world has seen the creation of international declarations, charters and conventions aimed at protecting the rights of humans. Such efforts gained prominence in the aftermath of the two world wars when European countries united to form the **United Nations** organisation (see 2: 2.6). One of the first tasks of this organisation was to draft a declaration that universally protected the rights of humans: the outcome - the United Nations **Universal Declaration of Human Rights** promulgated in 1948 (Paul 1990: 215). This human rights document was to influence numerous other international documents protecting the rights of humans both collectively and as individual groups such as women and children. This point was illustrated in the previous chapter (see 4: 2.2) that outlined the development of the United Nations **Convention on the Rights of the Child** and will be reiterated in this chapter that traces the development of children's rights movements in Africa (see 5: 3).

However, before this issue is discussed, a cursory review of the development of education in Africa needs to be provided to set the scene for the issues to be argued in this chapter.

2 REVIEW OF THE DEVELOPMENT OF EDUCATION IN AFRICA

The provision of education in Africa has been subject to a number of influences - especially that of western powers during the period of colonisation to which the majority of the continent was subjected.

2.1 A synopsis of the history of education in Africa

It is possible to divide the history of African education into four broad periods. The first was that period of indigenous African education when the *rites de passage* provided the principal education of the African child. This type of education prepared him for his responsibilities as an adult in his community. The coming-of-age ceremony marked the culmination of an epoch in his life (Scanlon 1964: 2-3).

The second phase could be termed early missionary education. Western education was introduced to Africa by European missionaries. This education was transmitted almost exclusively by religious groups who provided a rudimentary, practical education with the aim of teaching the populace to read so that they would be able to read the Holy Scriptures (Scanlon 1964: 3-5).

Between World Wars I and II, colonial governments were sensitised to accepting greater responsibility for their African subjects. The impact of, for example, the Phelps-Stokes report published in 1922 on the state of education in Africa was far-reaching. Highly critical of the failure of the colonisers to adequately fulfil the educational needs of African society, it prompted the formulation of colonial educational policies. The governments of England, Belgium and France were the first to issue statements indicating the direction they would follow in developing the schools in their African territories. These policies stressed particularly the need to adapt the curriculum to meet the needs of African society. Although mission schools were still common, the number of government schools rapidly escalated. A common policy followed by both the British and French, was that of distinguishing between the provision of education for village children who would leave school after a few years and the provision of education for those who were selected for formal academic training (Scanlon 1964: 5-7,9).

The final (or present) period commenced after the close of World War II. Initially much of the African continent was still under colonial rule and education rested heavily on the policies developed by the colonial powers. Education in the British territories was for example directed by the **Colonial Development Act** (1940) and the **Welfare Act** (1945). During the 1950s at the time when independence dawned for many African colonies, education in Africa underwent considerable change. Aided by the development funds and technical assistance of various countries and by the **United Nations**, education at the primary and university levels expanded significantly. The expansion of the former was

attributed to the insistence of the local people who saw education as a vehicle of social and economic mobility for their children. At the time when the colonisers were relinquishing their domination, they realised that the economic success of these former colonies depended on the establishment of a body of trained local personnel who would be able to assume responsibility for the newly independent state. Up until then the emphasis had been on primary education, but as the need for trained personnel increased, it became evident that secondary education facilities too, needed to be extended (Scanlon 1964: 3, 9-12).

The progression of education in Africa as outlined above was a matter which was monitored by the African states as well as by the international community. Several conferences (see 5: 2.2) on the development of education and related issues in Africa were organised at various points in time. Although not necessarily directed at advocating for the *rights* of children, the outcomes of these conferences were aimed at improving the circumstances of the child in Africa. The conferences under review focused on the provision of education, but necessarily had to address issues that regulate the provision of education.

2.2 Conferences on education and related issues held in Africa

At the **International Conference on African Children** held in Geneva in 1931 several conclusions regarding the provision of education of the child in Africa were drawn. The purpose of this conference called by the **Save the Children Fund** was primarily to extend the principles of the **Geneva Declaration** (see 4: 2.2) throughout Africa and consequently to deal with issues such as infant mortality, education and child labour (Sharp 1931: 3, 112). The main conclusions regarding education were that:

- education for African children should aim at the development of their personality;
- training should be to the advantage to the progress of their race;
- the curriculum should be suited to the aptitudes and to the moral, intellectual and physical needs of the African child;
- education should not be too theoretical;
- moral and religious elements should be included;
- the vernacular should first be taught followed by an European language;
- pre-elementary education should be given priority;
- the services of unqualified but capable voluntary workers should be utilised;
- Africans should have a voice in all structures controlling Africa's educational matters;

- the educational opportunities for girls should be increased;
- education in basic hygiene should be promoted;
- an urgent appeal should be made to the **International Institute of African Languages and Cultures** to prepare texts on elementary science and health care for use in school curricula (Sharp 1931: 113-114).

Thirty years later in May 1961, representatives of more than thirty independent African countries gathered in Addis Ababa at the **Conference of African States on the Development of Education in Africa** to discuss common problems and to determine priority educational needs to promote economic and social development of the continent (Scanlon 1964: 1). The singular focus of the conference was on the provision of education in Africa and the conclusions reached were that:

- plans needed to be laid for the establishment of adequate educational facilities;
- the provision of education should be related to the cultural and social characteristics of African society;
- an educational system needed to be developed that would serve a rapidly changing culture;
- African needs could be best met by a modern *African* educational system;
- the variety of European educational systems existing in Africa needed to be adapted to suit the particular requirements of the continent (Scanlon 1964: 1).

This conference was followed by similar conferences: Abidjan (1964), Nairobi (1968) and Lagos (1976). In 1982, the fifth regional conference dealing with policy and co-operation in the sphere of education in Africa was held in Harare. The **Conference on education in Africa** was attended by ministers of education and individuals responsible for economic planning in African states. A characteristic of the conference was the determination to promote African unity and solidarity and to strengthen Africa's links with other peoples (Yacine 1986: 3). At the conference systematic guidelines were furnished intended to be implemented during the following twenty years. The guidelines included in the **Harare Declaration** are to:

- democratise and renovate education;
- eliminate illiteracy;
- guarantee equal access for all to education (especially for children in rural areas);
- develop early childhood education;
- promote the education of girls so that they may enjoy equality in education;
- improve scientific and technological teaching and knowledge;

- restore the status of African cultural heritage and the traditional social and human values that hold potential for the future;
- develop African or national languages;
- make education more relevant to daily life by introducing productive work.

When the conference resolutions are examined it is found that certain themes are recurrent. The conclusions drawn in the conferences cited above reflect the following sentiments:

- the status of African cultural and social heritage needs to be restored;
- girls should be assured equality of education;
- health education and early childhood education should receive priority attention;
- education in general needs to be renewed and adapted to suit the needs of a changing social situation in Africa.

These themes are similar to the predominant themes of the 1979 **Declaration on the Rights and Welfare of the African child** and the 1990 **African Charter on the Rights and Welfare of the Child** which are discussed in 5: 4.2 and 5: 4.3. It could perhaps be deduced that, based on the continual recurrence of these themes, these principles represent the main aspirations of the African community in respect of those provisions deemed indispensable to education - this argument will be elaborated on in the discussion that follows.

Before a discussion on these issues can be undertaken, it is necessary to briefly refer to Africa's contribution to human rights documentation - documentation that served as precursors to the documents addressing the rights of the African child.

3 AFRICA'S CONTRIBUTION TO THE BODY OF HUMAN RIGHTS DOCUMENTATION

In chapter 2 (see 2: 4) it was explained how Africa - to ensure that a distinctive African outlook would be accurately reflected - took it upon herself to establish human rights documents that would address issues pertinent to the African context. The arguments posed and efforts undertaken in this regard will form the essence of the discussion that follows.

3.1 Africa's views of the United Nations Declaration of Human Rights

At the time of the drafting of the **United Nations** human rights declaration (1948), Africa was represented at the **United Nations** by her colonisers - the only independent African states at that stage were Liberia and Ethiopia. Africa, *per se*, had little opportunity to contribute to the establishment of the **United Nations** declaration and as such the majority of African states and people did not consider themselves obligated to the declaration [Nguema 1990: 261].

Apart from their alleged lack of representation and participation in the drafting of the declaration as cited above, African states cite the following reasons for their indifferent attitude towards the declaration:

- the declaration exalts principles of individual freedom at the cost of collective values, a principle rooted in African cultures (Paul 1990: 216; see 2: 4.1);
- Africa has a unique cultural outlook which is not provided for in the declaration. Although a plurality of cultures exists, Africans uphold distinctive yet similar customs and social values that are unique to Africa (Desai & Szabo 1968: xii; Paul 1990: 232; also see 2: 4.1).

The following points can be raised in response to the above. Even though it might be claimed that Africans are more group than individualistically orientated, it does not follow that the United Nations **Universal Declaration of Human Rights** is irrelevant to African societies. In traditional African society *women* or *children* as groups of individuals are discriminated against and even victimised. Collectively these *groups* need to be protected, but at the same time, it is the *individual* in the group who most pertinently experiences the effects of the discriminatory behaviour and who consequently needs protection of his or her rights. In essence, groups consist of individuals (see 2: 4.3).

In the search for an African identity, Desai & Szabo (1968: xii, 10, 49) identify certain basic cultural threads that they maintain unify African societies - the widespread observance of initiation ceremonies as an integral part of African social life, the relationship between the four broad groups or families of African languages - the Congo-Kordofanian, Nilo-Saharan, the Click and the Afro-Asiatic (Schneider 1981: 29), and the stratification of African society in terms of wealth, lineage (Schneider 1981: 7), gender and age. Howard (1990: 164, 166) contends that status differentiation based on *inter alia* age and gender pervades all African societies and goes on to point out that Africans in general are more tied to their extended

families and kinship groups than westerners (Howard 1990: 165) - a point which reinforces the concept of group identity in contrast to individuality.

Africa was not insensitive to the issue of human rights and assured the international community that the *human rights* of the western world had as its counterpart the African concept of *human dignity* (Howard 1990: 169; see 2: 4.1). Ultimately, all societies, traditional or modern, urban or rural have moral systems and much of the underlying notions of justice are common (Howard 1990: 178). Africa believed that the contention she had with the **United Nations** declaration would be resolved by establishing her own charter of human rights.

3.2 The Organisation of African Unity and the African Charter of Human and Peoples' Rights

The colonisation of Africa began in earnest in 1885 with Britain successively colonising no less than 15 different countries. Other colonisers included the French, Italians, Portuguese, Belgians and the Germans. Control of African countries continued up to 1957 with Ghana being the first to gain independence. During the 1960s no less than 18 states were to follow suit (Bascom 1965: 463; Schneider 1981: 39; Seck 1990: 285; Umozurike 1992: 3). Solidarity among African countries - possibly resulting from a shared desire for independence - was on the increase and by the time most of Africa had gained independence, the **Organisation of African Unity (OAU)** was formed in 1963. In July 1979 the OAU met to prepare a draft charter on human rights. Their stated objective was ... *to prepare an African human rights instrument based upon an African legal philosophy and responsive to African needs* (Khushalani 1983: 436; Umozurike 1992: 18). In 1981, the **African Charter of Human and Peoples' Rights** drafted by independent jurists working with government representatives was approved by the **Assembly of African Heads of State** (Kodjo 1990: 274; Umozurike 1992: 3). The charter also became known as the **Banjul Charter** - so named because many of the ministerial conferences had taken place in Banjul, the capital of Gambia [see 2: 4]. The charter came into force in October 1986 (Van Bueren 1993: 83) after having been ratified by the required majority of the member states of the OAU. According to the third activity report of the **African Commission on Human and Peoples' Rights**, (African Commission 1990: 436) forty of the fifty member countries had ratified the document by 1990.

The **African Charter of Human and Peoples' Rights** was considered to assimilate the unique character of Africa and to represent an African understanding of human rights (Okita 1992: 182).

3.3 The distinguishing principles of the African Charter of Human and Peoples' Rights

Because African declarations and charters proclaiming the protection of children's rights have acknowledged that the **African Charter on Human and Peoples' Rights** has been influential in their compilation (Van Bueren 1993: 31, 33), it seems appropriate to identify those underlying principles that distinguish the African charter from other international human rights documents. In addition, the charter itself acknowledges that the United Nations **Universal Declaration of Human Rights** was influential in the drafting of the **African Charter on Human and Peoples' Rights** (Kodjo 1990: 274).

The tenets contained in *Articles 18* and *27* of the charter set the scene for an African perspective on human rights. According to *Article 18* (cited in Van Bueren 1993: 83) the family is the natural unit and basis of society - the nucleus of society. It is through the family unit that the morals and traditional values recognised by the community are to be protected and perpetuated. The importance afforded the family is reflected in the obligation which the charter imposes on the state to protect, preserve and uphold the family.

Special mention is also made of the state's responsibility to ensure the elimination of all discrimination against women and to protect the rights of women and children as stipulated in international conventions and declarations (Van Bueren 1993: 83). This point proved to be controversial during the drafting of the charter as representatives of African human rights groups expressed concern that the duty which the charter confers on the family to protect and perpetuate African morals and traditional values could conflict with the aim - also conferred by the charter - to eliminate discrimination against women: discrimination against women is a fundamental feature of African society (Benedict 1990: 248; see 1: 1.2).

A further departure from the western concept of rights is found in *Article 27*. According to a western concept of rights an *individual's rights* are paramount. The African viewpoint is that the individual's rights are considered in the context of the *community* or group of which he is a part (Umozurike 1992:20) and in addition the individual has a duty to fulfil

his *responsibilities* towards the group. The duty towards the group has prominence over those rights to which the individual can lay claim (Howard 1990: 166). Article 27 of the charter also refers to the individual's duties and responsibilities towards the:

- family - to preserve its harmonious development and cohesion, and for children to respect parents and to maintain them in cases of need;
- nation - to preserve its independence, integrity, security and solidarity; and
- society by working towards promoting positive African values and African unity (Kodjo 1990: 278-279; Umozurike 1992: 13).

It could consequently be presumed that the tenets subscribed to in these articles of the charter reflect distinctive principles inherent to African society:

- the family occupies a central position in society;
- preservation of African culture and custom is paramount;
- collective rights have precedence over individual rights;
- duties take precedence over rights.

The following question may now be asked: to what extent do these principles apply in contemporary African society?

3.4 The context of the African Charter on Human and Peoples' Rights

Although Africa has propounded a human rights charter that is believed to comprehensively take cognisance of inherent African needs, the continent faces increasing social reorganisation caused by industrialisation and economic modification, increased urbanisation, burgeoning populations accompanied by an increasing trend towards individualism (see 2: 4.3). These issues are jointly responsible for transforming traditional African social beliefs and values (Desai & Szabo 1968: 92). On the other hand, Africa has not yet been fully urbanised or industrialised and the majority of the population (by 1990 an estimated 75% of sub-Saharan Africa) still lives in rural areas and consequently practice a traditional lifestyle (Paul 1990: 213).

It also needs to be remembered that throughout the colonisation period, Africa exhibited marked resilience to change - or westernisation - a point that is evidenced by the contrast (*inter alia* socially and economically) between the former African colonies and the erstwhile American colonies of the United States of America. It is believed that this resilience can be

attributed to the cohesiveness of African cultures (Van den Berghe 1965: 7-8; see 5: 3.1). This could imply that, when dealing with social relations, education, labour and social justice, a unique approach that acknowledges the distinctive nature of Africa needs to be followed in order to meet the needs of a "new" Africa (Shauro 1992: 281).

The point for outlining the circumstances leading to the establishment of the **African Charter on Human and Peoples' Rights** and for expanding on the underlying principles of the charter is to establish a base from which the **African Charter on the Rights and Welfare of the Child** can be introduced.

4 AFRICA'S CONTRIBUTION TO THE BODY OF CHILDREN'S RIGHTS DOCUMENTS

Not only did Africa feel the necessity to contribute to the body of human rights documentation, it also acknowledged that the circumstances of African children necessitated the drafting of documents which specifically addressed the needs of African children. This section consequently examines two such documents and highlights the main themes of each.

4.1 Circumstances leading to the drafting of children's rights documents in Africa

International concern for the rights of children can be dated back to the League of Nations **Geneva Declaration of the Rights of the Child** (1924) and the United Nations **Declaration of the Rights of the Child** (1979) (see 4: 2.2). These documents were formulated at a time when virtually the whole of Africa was under colonial subjugation and the declarations were subsequently not seen as being intended to apply to the children of Africa for reasons similar to those cited in 5: 3.1. Furthermore, the principles of the declarations enunciated could not be applied to a colonial background (Muthoga 1992: 123) where the mass of the people were under the control of a foreign power who was seen to be insensitive to the inherent traditions and customs of the populace. With the drafting of the United Nations **Convention on the Rights of the Child** Africa was not in a position to effectively participate in its formulation (Muthoga 1992: 123). In addition, many African

states saw the convention as a compromise document in the search for consensus of opinions and one which had avoided to address those issues thought to be emotive or divisive. Further, it did not address issues peculiar to Africa. With these perceived shortcomings in mind, it was decided to formulate an African agreement or pact that would simultaneously address the needs and rights of children and rectify the perceived shortcomings of the **United Nations** convention (Muthoga 1992: 124).

4.2 The Declaration of the Rights and Welfare of the African Child

In 1979 at the sixteenth ordinary session of the **Assembly of Heads of State and Government** of the **OAU**, a **Declaration of the Rights and Welfare of the African Child** was adopted. This was done in response to the resolution of the **United Nations General Assembly** (A/31/169) proclaiming 1979 as the **International Year of the Child** and the **United Nations** appeal for increased national, regional and international actions aimed at guaranteeing the rights and promoting the welfare of the child. A further motivating force for drafting the declaration was the concern of African states for the future of African children as inheritors and keepers of African cultural heritage (Van Bueren 1993: 31).

A review of the preamble and the twelve principles of the declaration reveals the following fundamental issues:

- the welfare of the African child is inextricably bound to that of its parents and other family members;
- the unequal status of female children needs to be addressed;
- cultural legacies and practices injurious to normal growth and development of the child (child marriage and female circumcision) should be abolished through legislation;
- African children should be encouraged to appreciate their own cultural heritage and that of Africa as a whole;
- unnecessary child labour should be curbed;
- health, nutrition and education should be part of national development programmes and made accessible to all children;
- special provision should be made for the disabled child;
- refugee and displaced children should be given particular attention;
- alternative educational facilities such as non-formal and out-of-school education should be explored and exploited.

Distinctive characteristics of African culture and attitude are acknowledged and embodied in the declaration. Main features of this document are its affirmation of the eminent status of the family and the implied role and obligation of the various members within the family group; its acknowledgement of traditional African customs and cultural practices; the commission to review the enforcement of harmful or undesirable customs; its identification of those issues threatening the survival of children in Africa and its acknowledgement of the necessity to find innovative solutions to problems confronting African society.

As a declaration, this document brought these issues to the attention of African society and made a significant contribution to the establishment in 1990 of the **African Charter on the Rights and Welfare of the Child**. Other regional documents that were influential in the preparation of the children's charter were the **Charter of the Organisation of African Unity** and the **African Charter on Human and Peoples' Rights**. The efforts of the **United Nations** in the field of children's rights were also explicitly acknowledged as a key source of inspiration (Bankole 1992: 433).

4.3 The African Charter on the Rights and Welfare of the Child

To facilitate discussion of this document the preamble and Part I of the charter are included in this dissertation as **Appendix 2: African Charter on the Rights and Welfare of the Child**. This section (Part I) deals with the rights and welfare of the child while Part II deals with the establishment, organisation and function of the committee whose task it is to oversee that the welfare of the child is protected and promoted.

The mandate that the drafters of this document were given was to establish a document that would address those problems peculiar to Africa that had not received adequate attention in the **United Nations** convention. The **United Nations Convention on the Rights of the Child** had served as an important source from which the African charter had drawn (Bankole 1992: 433) and several principles inherent to the convention are also to be found in the charter. With slight modification the essence of the non-discriminatory article, the "best interests" article, the articles ensuring freedom of expression, association and religion have also been included in the charter.

It is beyond the scope of this dissertation to compare the two documents in detail and therefore reference will be limited to those articles of the charter that deal with issues unique to African tradition and custom. Although the focus of the dissertation falls on the implications that children's rights movements have on education, from the data collected it seems evident that education does not stand in isolation and that several secondary issues impact on the provision of education and need to be dealt with first. For this reason reference will not only be made to the education articles, but also to other related articles.

Highlights of the charter will now be discussed and the reader is asked to refer to the Appendix for the unabridged version of the specific section under review. (The aspects which the author would like to bring to the attention of the reader have been italicised in the text of the discussion.)

4.3.1 The preamble: the rationale of the charter

The preamble states the rationale of the charter and as such highlights those issues that could be said to reflect distinctive African views, attitudes and needs. Mention is made of the critical condition of most African children. This situation is attributed to ... *the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger*. The African child is viewed as being in particular need of protection and care because of his physical and mental immaturity.

The *unique and privileged position* that children enjoy in African society is also highlighted and it is inferred that *for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love, and understanding*. Two principal prerequisites for the child's physical and mental development are identified: ... *particular care with regard to health, physical, mental, moral and social development and legal protection in conditions of freedom, dignity and security*.

In closing the preamble acknowledges the *cultural heritage, historical background* and the *values* of the African civilisation and it is noted that these features should be reflected in the concept of the rights and welfare of the child. A significant deviation from the **United Nations** convention, is the African charter's specific mention of the *performance of duties on the part of everyone*.

In summary: the preamble highlights the following salient points - the situation of many African children is deplorable; children enjoy a privileged position in African society and the family is the fundamental nurturing ground for the child; the cultural heritage and values of African society should be acknowledged and respected; and a precondition to the enjoyment of rights is the performance of the related duties (see 5: 3.3).

These arguments are developed further by the articles of the charter and the reader is referred to Appendix 2. The main themes of the charter and their implications are discussed in the following sections.

4.3.2 Traditional and cultural practices

Please refer to *Article 1* (3), *Article 11* [2(c)], *Article 21* (1&2) and *Article 31* (d).

The charter's expressed cultural propensity is the common theme of these articles. Cognisance should also be taken of reference to this issue in the preamble (see 5: 4.3.1). *Article 1* obliges states to recognise, protect and implement mechanisms for the enforcement of the guaranteed rights of individuals in spite of cultural or traditional constraints while *Article 11* (which will be discussed at greater length in 5: 4.3.4) specifies as one of the three goals to which education in contemporary Africa should be directed, the preservation and strengthening of positive African morals, values and cultures. *Article 21* again seeks to protect children against harmful social and cultural practices which would jeopardise the health of the child and those practices which are discriminatory. (Here one calls to mind the prevalence of female circumcision - a practice that is common in many African countries.) *Article 21* expressly proscribes child marriage and reinforces the provision of *Article 2* which sets the upper age limit of a child at 18. No allowance is made for attaining majority earlier as provided for in the **United Nations** convention. (See **Appendix 1: Article 1**). In *Article 31* the child is instructed to preserve African cultural morals and values.

The disagreement among these articles is conspicuous - conventions central to African tradition (e.g. initiation ceremonies and child betrothal) are proscribed and it could be contended that the charter may be on a collision course with African cultural heritage and traditions (Bankole 1992: 440). On the other hand, the mandate enshrined in these articles could be seen as an injunction to sift through African tradition and customs in search of those elements that deserve to be preserved and upheld. It could be expected that judgment

of what exactly should be considered "deserving" could arouse passionate debate.

4.3.3 The family, its members, their rights and responsibilities

Please refer to *Article 18* (1&2), *Article 9* (2), *Article 20* (1&2) and *Article 31* (a, c & d).

The importance of the family in traditional African systems is a fact which is commonly conceded (Bankole 1992:438). A significant feature of the charter is the central position granted to the family and the recognition of parental duty in a number of areas. These duties range from guiding and directing the child (*Article 9*), ensuring that the best interest of the child be paramount in all decisions and activities involving children, that conditions conducive to the upbringing of the child be provided and that domestic discipline be humanely administered (*Article 20*). Another feature of these articles is the listing of the child's perceived responsibilities with regard to family and parents. By so doing, the charter reinforces the position of protecting and preserving the family unit by imposing on the child the duty to work towards the cohesion of the family and to respect and support parents and elders (*Article 31*).

A core doctrine of family law in Africa is that parental authority over children is perceived in almost absolute and exclusive terms. In tribal African communities customary law governs and children are regarded as the property of their parents (Bankole 1992: 438). This point is in variance with the notion of acting in the *best interests* of the child as provided for in *Article 20*. However, the subservient position of the child is reinforced by *Article 31*. It has been suggested that the realisation of the obligation of *Article 31* is only possible in a domestic environment characterised by a significant measure of parental control and discipline (Bankole 1992: 439).

It remains an interesting feature of the charter however that not only are the rights of children referred to, but also the duties of children as well as those of the parents. This is in notable contrast to the character of the **United Nations** convention which (although it does refer to parental duties in *Articles 5, 14 and 18* [see **Appendix 1**]) emphasises the rights of the child.

4.3.4 The aims of education in African context

Please refer to *Article 11* [1, 2[c], [d], [f], [h], 3 [a], [e] & 4].

The provision of education in Africa is complicated by several factors - political, social and economic - that have afflicted most African nations in the post independence era (Bankole 1992: 436). In *Article 11* certain of these issues have been identified and the article attempts to provide strategies to ease the situation. Three key issues are highlighted: the position of traditional African values, morals and customs, the necessity to provide the child with basic health education and the need to encourage education for girls.

The provision of health education should be seen in conjunction with *Article 14* that also highlights the importance of health education. According to this article, states are required to take measures to ensure that all sectors of society ranging from parents and children to community workers are informed of and supported in the use of basic knowledge of *inter alia* child health, nutrition, hygiene and sanitation. The preamble to the charter also refers to these issues (see 5: 4.3.1). Taking into account the deplorable health crisis facing many children of the continent and their pitiful living conditions, this is indeed a commendable ideal to pursue (see 5: 5.6).

Similar to the **United Nations** convention, the African charter also recognises the child's right to free and compulsory education and at the same time the African charter recognises the right of the parent to choose a school that ensures that the child is provided with religious and moral education consistent with the evolving capacities of the child. No reason is given why reference is made to moral and religious education only. No mention is, for example, made of schools that promote a particular cultural identity or provide schooling in a preferred medium of instruction - preferences that parents may also choose to exercise.

4.4 Summary

Discussion has been limited to selected articles of the charter. These articles were chosen primarily because they deal with issues unique to the African situation. In no way is this a detailed analysis of all the articles addressing those most pressing issues that impact on children. To remedy this shortcoming it would also be necessary to undertake an appraisal of articles dealing with *inter alia* child labour (*Article 15*), protection against child abuse

and torture (*Article 16*) and protection against apartheid and discrimination (*Article 26*). However, it is hoped that from the above discussion, the general trend of the **African Charter on the Rights and Welfare of the African Child** has been adequately outlined.

Although individuals who deal with the issue of children's rights are familiar with this document, and have even acknowledged that cognisance must be taken of its contents in the preparation of submissions to the **Constitutional Assembly** which is presently involved with the drafting of a new constitution for the Republic of South Africa (see 5: 5.4.2) its international standing is weak. As an **OAU** document it stands to be ratified by the 50 member states of the **OAU**, and to date, only four states have done so [Gardner 1995].

It could be conjectured that the complexities and intricacies of determining which aspects of African culture and tradition need to be preserved or abandoned and the necessity to reconcile conflicts between African traditional cultural values and contemporary norms and values are so involved, that states are reluctant to ratify this document - for after ratification, these states would be obligated to conform to the requirements set out in the charter.

The efforts of the African community to address children's issues through international documentation have been highlighted: the focus now moves to the local situation and children's rights advocacy in the Republic of South Africa.

5 ADVOCACY FOR CHILDREN'S RIGHTS IN THE REPUBLIC OF SOUTH AFRICA

The Republic of South Africa currently finds itself in a phase of renewal. A new constitution is in the process of being drafted and consequently the opportunity to reevaluate existing legislation affecting *inter alia* children is at hand. The **Constitutional Assembly** is in a position - and is faced with the challenge - to replace inappropriate or ineffectual legislation - an opportunity which it cannot afford to forego. In the light of these sentiments, the past and current social circumstances of children in the Republic are briefly outlined.

5.1 The social circumstances necessitating children's rights advocacy

To many people *South Africa* is synonymous with *apartheid*. There is no denying that the apartheid policy was responsible for considerable injustices towards races who were not white, and, although the apartheid laws were primarily aimed at adults, indisputably children also suffered as a consequence. It will be noticed that the focus in this section of the dissertation falls on the circumstances of black children because their situation was - and is - arguably the most deplorable of all racial groups in the Republic.

Legislation that officially announced separate development was contained in the *Republic of South Africa Constitution Act* (No. 32 of 1961) at the time when South Africa gained its independence from Britain. But prior to this, legislation such as the *Group Areas Act* (No. 41 of 1950), the *Native Laws Amendment Act* (No. 54 of 1952 providing for influx control and the pass laws), *Reservation of Separate Amenities Act* (No. 49 of 1953), the *Industrial Conciliation Act* (No. 28 of 1956 that dealt with work reservation for persons of specified racial groups), the *Bantu Self-Government Act* (No. 46 of 1959) all contained provisions that disrupted the community and family life of those to whom it applied (Horrell: 1978: 9, 40, 71, 113, 263).

The policy of apartheid has recently been abolished by the *Constitution of the Republic of South Africa* (Act 200 of 1993), but unfortunately black children still experience the aftermath of the apartheid laws. Although the focus is on the circumstances of black children (as explained above), it would be unfair to the children of other races in South Africa to suggest that their circumstances were (or are) idyllic and that they do not require protection from unfavourable circumstances or intervention on their behalf in such matters. The reality of society's exploitation of and offenses against children in general are all too evident (see 5: 5.3.1.2). Social tragedies such as child abuse, malnutrition, discrimination on the grounds of age and gender and poverty have no racial bias and children of all races need to be protected from these unfortunate situations. However, with blacks in South Africa totalling roughly 75% of the population, black children are conspicuously prominent in the statistics in the issues listed above (Eide 1991: 38-41).

With the incidence of social maltreatment and the consequences of apartheid policies being borne in mind, the spotlight moves to those attempts to improve the lot of all the children of South Africa.

5.2 Children's rights movements: the provision of education

Certain organisations such as **UNICEF** and the **National Children's Rights Committee** (NCRC) believe the student uprisings of the late 1970s to mark the beginning of the struggle for children's rights in South Africa (Bardill & September 1994: 6; Eide 1991: 42). The focus of this dissertation is not on the provision of education for the different racial groups, however it is necessary to briefly outline the history of black education (the uprisings occurred among black students) to give perspective to the discussion to follow.

Prior to the *Bantu Education Act* (No. 27 of 1953), the administration and funding of education for blacks rested heavily on the shoulders of mission societies (Horrell 1978: 295). Shortly after coming to power, the National Party government appointed a **Commission on Native Education** in 1949 under the chairmanship of Dr. WWM Eiselen to investigate *inter alia* the *formulation of principles and aims of education for Natives as an independent race in which their past and present, their inherent racial qualities, their distinctive characteristics and aptitude and their needs under ever-changing social conditions are taken into account* (Horrell 1978: 297). Its detailed recommendations reported in 1951, formed the basis of the system of black education introduced in 1953. Dealing with the aims of education it acknowledged that the blacks who had given evidence had shown *an extreme aversion to any education specially adapted for the Bantu* (Horrell 1978: 297).

Resistance to the state's provision of formal education for black children as promulgated in the *Bantu Education Act* was forthcoming from various church organisations (Mothabi 1986: 20-23), the **South African Institute of Race Relations** (Davis 1972: 23), the official opposition party in parliament and various academics (Christie 1985: 226; Lodge 1985: 114-138). Black interest groups such as the **Cape African Teacher's Association**, the **Transvaal African Teachers' Association** and the **Teacher's League of South Africa** arranged conferences to gather support for their condemnation of the *Bantu Education Act* (Christie 1985: 226; Lodge 1984: 270-273).

In reaction to the social conditions (which included the educational, political and economic circumstances) under which non-whites were expected to live, the **ANC** together with the **South African Indian Congress**, the **South African Congress of Democrats**, the **South African Coloured People's Congress** and the **South African Congress of Trade Unions** formed a congress alliance in 1953. The **National Action Committee** - the coordinating committee of the congress alliance - was instructed to draft a **Freedom Charter** in which

the desires of Africans would be verbalised. The expectations for the provision of education as contained in the charter are the following:

- the aim of education shall be to teach the youth to love their people and their culture...;
- education shall be free, compulsory, universal and equal for all children;
- the government shall discover, develop and encourage national talent for the enhancement of our cultural life;

while under the ideals for national groups it is stated:

- all people shall have equal right to use their own languages and to develop their own folk culture and customs (Motlhabi 1986: 46).

The historic Soweto uprising (16 June 1976) instigated (overtly) by high school students and their parents protesting various educational issues including the high drop-out rates, the overpopulation of black schools, inadequate facilities and the use of Afrikaans as medium of instruction (Hirson 1979: 122-158), marked the beginning of student unrest which would flare up again in the 1980s (SAIRR 1980: 503). One might be tempted to sanction the efforts of children to become actively involved in attempts to improve their situation regarding schooling if it can be believed that these events took place in the interest of establishing equal and equitable education, but it would be naive to think that anti-apartheid politics had no part to play (Eide 1991: 42); it may even be suggested that children were exploited by political organisations who used children in their attempts to further their own political goals.

In the instances cited above, reform of issues affecting children had focused on the improvement of the provision of education for non-white groups. The aspiration for the adequate provision of education was not the major problem confronting children: the education unrest lead to further unrest in the townships and basic requirements such as food, health care, shelter and protection from violence and abuse were issues that increasingly affected children from all racial groups. The deteriorating social situation of children called for urgent attention.

5.3 Children's rights movements: focus on the social situation of children

An interesting feature of children's rights advocacy in the Republic of South Africa, is the contribution and participation of children in this regard. The active role of children (as

evidenced in the student uprising discussed above) could possibly be attributed to increasing dissatisfaction arising from the deplorable circumstances in which they found themselves and the ineptitude of their parents to oppose the social system under which they found themselves.

5.3.1 Social conditions of children under the closing stage of apartheid

The apartheid policy has been blamed for the deplorable situation of the majority of the black community of the Republic. Poverty, increasing urbanisation and violence are *inter alia* factors which have exacerbated the situation. These factors - which are common worldwide even where policies of apartheid are not followed - could however also be attributed to the tenets of apartheid and their effect on the living circumstances of children.

5.3.1.1 Township violence

Widespread resistance to apartheid institutions throughout rural and urban South Africa surfaced in several townships of South Africa during September 1984. Factors which triggered the demonstrations included the rising cost of living, the deterioration of living standards of township residents, the imposing of rental and service charges and also the education crisis referred to in 5: 5.2. The scale of the unrest was considered more extensive than the Soweto students' rebellion of 1976. Police intervention followed and in October and November of that year army troops were called in to assist the police in bringing matters under control. Between 1985 - 1987 the government called a **State of Emergency** and promulgated regulations giving the police extra-ordinary powers to help them contend with the unrest (Haysom 1988: 53-54). By 1987 it was estimated that 40% of those arrested in connection with township violence were children, and that of the estimated 1 000 people killed during protest-related incidents, 12% of the victims were younger than 15 (Haysom 1988: 56-57). The number of children wounded or traumatised by the uprising could only be guessed at (Brittain & Minty 1988: 9).

5.3.1.2 Living conditions of children

The violence referred to above caused immeasurable trauma for children. Basic necessities such as food, housing and a safe home environment were and remain mere dreams for many children, especially for those living in the townships (Eide 1991: 38-39).

Violence - so common that people have apparently become insensitive to the phenomenon - breaks families apart and the routine of family life which helps children grow up in a secure environment is destroyed. Even children who do not live in areas directly affected by violence are affected by the "darkening shadow" of violence. According to psychologists, South African children are especially prone to psychiatric disorders (Kimaryo 1993: 19-20). A study in 1992 estimated that 1.8 million children in South Africa were permanently separated from their mothers and the number of street children was estimated at 10 000 (Leader: April 1994).

A further harsh reality is that the infant mortality rate in South Africa is worse than that of other African countries such as Botswana, Zimbabwe, Zambia, Kenya, the Congo, Tunisia and Algeria: for blacks in South Africa for every 100 babies born, 10 are likely to die before their first birthday (Eide 1991: 39; NCRC 1993: 10). One third of black children under the age of 14 are malnourished and of these many will die of malnutrition related diseases such as gastroenteritis (Eide 1991: 39).

The **South African Police** reported in the *Leader* of 25 April 1994 that child abuse had doubled in the past four years and juvenile delinquency is also on the increase. On 15 July 1994 the *Sowetan* reported that the **Soweto Child Protection Unit** had handled 511 cases of child abuse since the beginning of that year. Of these 272 were rape-related. In reaction to these statistics, Helen Starke, director of **South African National Child and Family Welfare** traced the causes of child rape and abuse to communities where the rights of children were not protected and concluded that society fails to recognise that children have rights (Sowetan: July 1994).

These are but a few of the critical issues that face children: others include the threat of AIDS and teenage pregnancy. Enough has been said. Statistics are cold and indifferent but when used to reflect issues involving children it is that very quality which most forcefully brings home the stark reality: for many children, childhood is not a joyous stage in life.

Nevertheless, the predicament of children in the Republic has not only been noted by the local community. International concern and support has also been forthcoming and will be reviewed shortly.

5.3.2 International concern for the societal situation of children in South Africa

Local African and international organisations verbalised their concern for the plight of African children in general as well as for children under the apartheid regime in South Africa. A further matter of concern was the provision - or lack thereof - of education for children in Africa. These concerns were addressed by the calling of conferences on children's issues.

5.3.2.1 The Harare Conference

Alarmed by the social conditions (see 5: 5.2 & 5: 5.3.1) and what had become known as the *war on children*, the **Bishop Ambrose Reeves Trust** and the **University of Zimbabwe** jointly organised an international conference on **Children, repression and the law in apartheid South Africa**. The conference held in Harare in September 1987 was attended by a large contingent of South Africans, as well as child victims of the uprisings with their parents, doctors and lawyers who gave testimony of the atrocities being committed (Brittain & Minty 1988: 9). Others to attend were representatives of more than 150 organisations and interest groups worldwide. Rt. Reverend Bishop Trevor Huddleston C.R., convenor of the Harare conference speaking at the opening ceremony pointed out that ... *this basic moral evil can never end until apartheid itself is destroyed and it was that knowledge which brought the children of Soweto out onto the streets over ten years ago. In the last four years since the promulgation of the new constitution in South Africa and since the continuing States of Emergency have been imposed, it has been children who have been a major target of oppressions* (Brittain & Minty 1988: vii).

During the drafting of a conference declaration, the delegates committed themselves to keeping the world aware of the plight of South Africa's children and to continue monitoring and exposing the repression and abuse of children. An appeal was made to the international community to impose sanctions on the government of South Africa. Those attending the conference pledged themselves to work towards the realisation of a united, non-racial and

democratic South Africa (Brittain & Minty 1988: 138-139). This conference took place three years before the reform initiatives of FW de Klerk, then president of the Republic of South Africa.

5.3.2.2 The Gaborone Conference

A second international conference on children's issues and rights was held in Gaborone in April 1990. This conference was also attended by a broad range of South African **NGOs**, political and community leaders and other children's rights interest groups. The most important outcome of the conference was the decision to form an organisation, the **NCRC**, to advocate for the rights of children (Bardill & September 1994: 6). The role and accomplishments of this organisation will be discussed at greater length in 5: 5.5.

5.3.2.3 The United Nations World Summit for Children

In September 1990, the **United Nations** called a **World Summit for Children** at which global goals for children and their development were set. Many of the goals were initially formulated as part of **Protecting the world's children: an agenda for the 1990s** which was introduced as the **Talloires Declaration** in March 1988 by the **Task Force for Child Survival**. The task force was composed of representatives from *inter alia* the **World Bank**, the **World Health Organisation** and **UNICEF**. Endorsing the United Nations **Convention on the Rights of the Child**, the major goals specified in the **World Summit Declaration** included goals for child survival, development and protection. Specific goals to be achieved by the year 2000 include:

- 50% reduction of the infant mortality rate and in the maternal mortality rate;
- 50% reduction in severe and moderate malnutrition among children under the age of 5;
- provision of safe drinking water and sanitation;
- access to basic education and the achievement of primary education by at least 80% of primary school-age children;
- special attention to the health and nutrition of female children;
- eradication and/or reduction in the number of cases of preventable diseases;
- protection of children in difficult circumstances and commitment to addressing the causes leading to such circumstances (UNICEF 1991: 13-16; Kimaryo: 1994).

It was recognised that the least developed countries would not be able to attain most of the goals without assistance from the state combined with external support (UNICEF 1991: 16-17) but possibly the most significant event of the summit was the call to define and agree on strategies for improving the well-being of children and the acceptance of the concept of developing **National Programmes of Action** (NPAs) to achieve the goals set by the summit (Bardill & September 1994: 7). South Africa heeded this call and its NPA was handed to President Nelson Mandela on 16 June 1994 (Bennett 1995). This matter will receive further attention under 5: 5.5.3.

Described above are the efforts of international and local interest groups and even children themselves to improve the circumstances of children by drawing attention to the social, political and educational situation of children. The question that follows is how the state has contributed to addressing the needs of children.

5.4 State provision for legislation affecting children in South Africa

A brief survey of child protection legislation in South Africa takes one back to 1913 when the first post-Union *Child Protection Act* (No. 25) was promulgated. The act protected white children from parental neglect and abuse but made no mention of children of other racial groups (Mabandla 1992: 129-130). The act was later amended by the *Children's Act* (No. 31 of 1937) which provided for the creation of children's courts and proposals dealing with adoption (Spiro 1985: 62). In 1960 this act was amended to include children of other races - sections 2 to 8 of the *Children's Act* (No. 33 of 1960) (Spiro 1985: 344-347).

Other acts dealing with children of all races are the *Age of Majority Act* (No. 57 of 1972) which sets the age of majority at 21, the *Child Care Act* (No. 74 of 1983) and the *Child Care Amendment Act* (No. 86 of 1991) that *inter alia* focus on both the child and the parent and the care of the child by the parents or by those entrusted with the custody of the child (Spiro 1985: 248-350). The most recent act pertaining to children, the *Guardianship Act* (No. 192 of 1993), concedes equal rights of both parents who have custody of the child.

But: the Republic of South Africa currently faces a phase of renewal - both socially and politically. At present the **Constitutional Assembly** has the task of drafting a new constitution and by 1996 new legislation affecting *inter alia* children is expected to be tabled. Documents that - given the political situation of the country at the time of and

preceding the democratic elections of 1994 - can be expected to influence the thrust of the new constitution will now be examined.

5.4.1 The African National Congress (ANC) proposed Bill of Rights

In the formulation of its **Bill of Rights**, the **ANC** relied on existing documents such as the **Freedom Charter** [see 5: 5.2] and the **Constitutional Guidelines** of the **ANC**.

The first draft bill published in November 1990 was revised in 1992. The **ANC Bill of Rights** provides a special clause on the rights of the child and draws heavily on the United Nations **Declaration on Rights of the Child** (Moosa 1992: 137). This clause states that:

- all children shall have the right to a name, to health, to security, education and equal treatment;
- the state shall to the maximum of its available resources, seek to progressively achieve the full realisation of their rights;
- no child shall suffer discrimination or enjoy privileges on the grounds of race, colour, gender, language, creed, legitimacy or the status of his or her parents;
- in all proceedings concerning children, the primary consideration shall be the best interests of the child;
- children are entitled to be protected from economic exploitation and shall not be permitted to perform work that is likely to be hazardous or harmful to their education, health or moral well-being;
- it shall be unlawful to oblige children to work or perform services for their employers or their parents or other family members (Moosa 1992: 140-141).

Two features of the proposal need to be highlighted: while the **Freedom Charter** is acknowledged as a source for the **Bill of Rights**, reference to the ideal of ... *teaching the youth to love their people and their culture* ... and ... *right to ... develop their own folk culture and customs* as provided in the **Freedom Charter**, are substantially watered down to merely acknowledging the child's right to be free from discrimination and that by implication he has the right to enjoy his own culture and customs. The other feature is one which is reminiscent of the OAU **African Charter on the Rights and Welfare of the Child** namely the obligation children have towards their parents. The **ANC Bill of Rights** however, appears to relieve the child of all obligation to the parent.

In the **ANC Policy Guidelines for a Democratic South Africa** adopted at its national conference in May 1992, the sections that deal with education and children seem to focus on redressing the inequalities of the past (Ready to govern 1992: 29-30; 43). In referring to the rights of youth, the policy guidelines acknowledge the United Nations **Convention on the Rights of the Child**.

Further discussion of the **ANC** policy document is unnecessary as the present constitution [Act No. 200 of 1993] which came into effect after the April 1994 elections will form the basis of the new constitution yet to be drafted.

5.4.2 The Interim constitution and its provision for children

After the April 1994 elections, the interim constitution *Constitution of the Republic of South Africa Act* (No. 200 of 1993), came into effect. At the time when the dissertation was being finalised, South Africa was on the threshold of drafting a new constitution for according to *Section 73 (1)* of the interim constitution, the **Constitutional Assembly** has two years in which to draft a new constitution. In the interim constitution, Chapter 3 (which deals with fundamental human rights) provides for the child. The section that has a direct bearing on the child is *Section 30* while *Section 32* deals with education, and consequently, also with children. According to *Section 30* the child is a person under the age of 18. In all matters concerning the child, his best interest should be paramount. The child has the right *inter alia* to a name and nationality as from birth; to parental care; to security, basic nutrition and basic health and social services; not to be subject to neglect or abuse; and not to be subject to exploitive labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being. *Section 30* also provides for the protection of the child in detention.

Section 32 states that every person has the right to a basic education and to equal access to educational institutions; to instruction in the language of his or her choice where this is reasonably practicable; and to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the basis of race.

In its final report on **Group and Human Rights: Project 58** issued in October 1994 to the Minister of Justice, Mr AM Omar, the **South African Law Commission** assesses the

sections dealing with children as cited above and has the following comments to make. It is suggested that because all the human rights provisions of the interim constitution include children (because children are also "human"), it may be unnecessary to refer to the rights of children specifically. However, because the rights of children are so central to the South African situation, the **Law Commission** is of the opinion that no harm could come if specific aspects of child protection are referred to. In preparing its report, the **Law Commission** took cognisance of international children's rights documents such as the **United Nations** convention and the African charter (Hollembly 1995). The **Law Commission** does not support a special charter on children's rights and appears to support the submission made in February 1992 by the **South African National Council for Child and Family Welfare** which remarks that ... *the International Convention [on the Rights of the Child] is formulated in such a comprehensive manner that it will be superfluous to draft a similarly worded Children's Charter.* The **Law Commission** acknowledges that children do require special attention and thus endorses the formulation of Section 30 of the constitution (South African Law Commission 1994: 109-111).

In referring to the right to education, the **Law Commission** makes the following comments: *There are three interrelated elements of the right to education the Commission would like to protect: ... the State may not deny to anyone the right to education ... it ought to give total discretion to the State to determine the nature and scope of its involvement with education ... related to this aspect is the right to instruction in the language of a persons's choice. Lastly, it should guarantee the rights of parents to have their convictions respected in relation to their children's education* (South African Law Commission 1994: 115). In making its recommendation, the **Law Commission** adds the following point to the existing section dealing with education: *Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own religious and philosophical convictions* (South African Law Commission 1994: 118).

The main purpose of the report prepared by the **Law Commission** is to assist the **Constitutional Assembly** in its task of formulating and enacting a final bill of rights for the country (Hollembly 1995).

The campaign to secure rights for children has been fought on numerous fronts - also by **NGO's** concerned about the plight of children in the country. In South Africa, the co-ordinating body in this regard appears to be the **National Children's Rights Committee**.

5.5 Children's rights movements come of age: the establishment of the National Children's Rights Committee (NCRC)

It has already been noted that the **NCRC** was formally established at the Gabarone Conference (see 5: 5.3.2.2) in April 1990. The **NCRC** constitutes over 200 organisations including parents, international organisations (e.g. UNICEF), community organisations (e.g. the **Community Law Centre**) and civic groups who support children's rights. The organisation has its headquarters in Johannesburg and has 14 regional offices throughout the country. The **NCRC** does not set up alternative structures but chooses to work through established organisations (Bardill & September 1994: 7; Bennett 1995).

The objectives of the organisation are to advocate for the rights of children (based on the United Nations **Convention on the Rights of the Child**) and to draft co-ordinated plans of action for the alleviation of the deplorable situations under which children are living. In advocating the rights of children the **NCRC** recognises that women's rights are inseparable from the rights of children and consequently works towards improving the status, education, health and income of women as well (Bardill & September 1994: 7; Bennett 1995).

Several strategies are employed in a bid to realise the goals of the **NCRC**. For example:

- a national campaign task force has been established to co-ordinate national campaigns (e.g. the co-ordination of conferences and research and development programmes (see 5: 5.5.2 & 5: 5.6);
- the media is utilised to provide coverage of the activities of the **NCRC** and issues affecting children's rights (Bennett 1995);
- booklets, resource materials, community programmes and posters that sensitise and educate the broad public - also children - regarding children's rights are prepared and distributed (Gardner 1995); and
- a **NCRC** legal team (consisting of between 6 and 14 individuals from a variety of fields of specialty within the legal profession) that assists in the preparation of submissions to the **Constitutional Assembly** has been constituted (Bennett 1995; Gardner 1995).

The collective employment of these strategies ensures the achievement of the aims of the organisation. Since its inception, the **NCRC** has accomplished a number of major assignments of which the following are the most significant.

5.5.1 The Situation Analysis

In response to the **World Summit Declaration** call for states to prepare a **NPA** to be used in dealing with the problems facing children (see 5: 5.3.2.3), the **NCRC** initiated a joint venture with **UNICEF** in mid-1991 to conduct an in-depth analysis of the situation of children and women in South Africa. This study led to the publication of two reports in 1993: **Children and women in South Africa: A situation analysis** and **The state of South Africa's Children: An agenda for action** (Bardill & September 1994: 7; Bennett 1995).

The study encompassed such issues as children's health, welfare and their legal status within the social, political and economic context of the country. Four most important threats to child survival, protection and development in South Africa were identified as being diarrhoeal diseases, acute respiratory infections, malnutrition and child abuse (Kimaryo 1993: ii). It was believed that these threats could be alleviated through political and social change and by expanding primary health care services and sanitation, by providing clean water, basic education and improving child nutrition (Kimaryo 1993: iii). A precise list of the major goals for child survival, development and protection was drafted - goals similar to those of the **World Summit Declaration**. In addition, a call was made to the government to ratify the United Nations **Convention on the Rights of the Child** before the end of 1995 (Kimaryo 1993: 27).

An update of the situation analysis conducted between 1991 and 1993 is presently being undertaken to determine the current circumstances of children and women in South Africa (Bennett 1995).

5.5.2 The Conference on the State of South Africa's Children and the Thembisa Declaration

In June 1993 a **Conference on the State of South Africa's Children** was hosted jointly by **NCRC** and **UNICEF** at Midrand, Johannesburg. The purpose of the conference was to:

- initiate a consensus seeking process on the priority needs of children in South Africa;
- provide basic data as well as recommendations to major stakeholders involved in the promotion of the survival, protection and development of children in South Africa;
- and

- initiate discussion on the development of a **NPA** to address the needs of South Africa's children (NCRC 1994: 1).

The **Thembisa Declaration** was the culmination of the conference proceedings in which all conference participants reaffirmed their commitment to promoting and protecting children's rights. The deteriorating situation of children in conflict areas, and the increasing numbers of homeless children and of children in difficult circumstances raised concern. In brief, the nine points to which the conference committed itself were to:

- promote and protect children's rights as provided for in the United Nations **Convention on the Rights of the Child**, the **African Charter on Rights and the Welfare of the Child** and the **Children's Charter of South Africa** (see 5: 5.6);
- call for a democratically elected government to adopt the children's rights charters and conventions cited above;
- make constitutional provision for the protection and promotion of the rights of children in South Africa;
- redress the imbalances in child health and welfare;
- protect and restore the family as the fundamental unit of society;
- protect women and children from discrimination;
- end political violence;
- establish a **National Children's Forum**; and
- draw up a co-ordinated **NPA** to alleviate the plight of South African children (Thembisa Declaration 1993).

The drafting of the **NPA** was a considerable task which required a great deal of preparation (see 5: 5.5.1). However, the **NPA** became a reality in 1994 and on June 16, commemorated as the **Day of the African Child**, the document was presented to President Mandela.

5.5.3 The National Programme of Action (NPA)

Children's rights advocacy in South Africa took a momentous step forward with the drafting and presentation of the **NPA** document in 1994. The comprehensive document details the background to the **NPA** and the struggle for children's rights in South Africa. In addition, goals for child survival, protection and development - based on the **World Summit** goals (see 5: 5.3.2.3) - are listed. Problems which will have to be faced in realising the defined goals include poverty and underdevelopment (NCRC 1994: 15), health care (NCRC 1994:

17), malnutrition (NCRC 1994: 20), the unequal and fragmented nature of the education system (NCRC 1994: 22), early childhood development (NCRC 1994: 24), family life and welfare (NCRC 1994: 29), violence, abuse, neglect, abandonment and street children (NCRC 1994: 31-35). The document is concluded with a suggested strategic framework for the implementation of the **NPA** (NCRC 1994: 43-48).

Underlying principles of the **NPA** are that children should be given high priority when resources are allocated and when priorities for socio-economic development projects are determined. The **NPA** recommends that collaboration and partnership between both the government and private sector is desirable and that consultation with organisations concerned with the well-being of children should take place at all levels - from local to international. Since the effectiveness of a **NPA** is determined by the extent of community-based involvement, a call is made for the decentralisation of activities. The **NPA** and the **Reconstruction and Development Programme** (RDP) - a policy document formulated by the **Government of National Unity** during 1994 in which guidelines for the reconstruction and development of the country are detailed - are founded on similar moral and social principles and it is proposed that within government structures, responsibility for the **NPA** should rest with the President's office as does the **RDP**. The **NCRC's** role in working towards these objectives will be to ensure that the **NPA** progresses and that it is seen as a process of consequence in the Republic of South Africa (NCRC 1994: 43-47).

The **NCRC** has completed its task in this regard for the time being - the matter now rests with the government to decide if, when and how the programme of action will be implemented. The issue of children's rights does not stop here - advocacy for children's rights needs to be undertaken from all quarters and in South Africa children too are involved in movements lobbying for children's rights.

5.6 Children and their contribution to children's rights movements

South Africa is in the unique position of being the only country in the world that has a charter for the rights of children drafted by children themselves (Bennett 1995).

Between 27 May and 1 June 1992 some 200 children between the ages of 12 and 16, representative of race, class, gender and disability, and from twenty different regions in South Africa got together at the **International Summit on the Rights of Children in**

South Africa to discuss the problems facing them. At the close of the summit, the children drafted and adopted the first **Children's Charter of South Africa**. The clauses of the charter reflect the experiences and concerns of these children in areas such as family life, health and welfare, education, homelessness, child labour and violence (see **Appendix 3**).

The charter is formulated in simple terms and the detail of certain of the clauses reflects the individual experiences and perceived needs of the child drafters. The similarities that exist between the underlying principles of the charter and the **United Nations** convention are possibly a result of the training workshops attended by the child delegates prior to their drafting the charter. Guidance regarding the issue of rights and related matters was provided by members of the **Community Law Centre** and the **NCRC** during a preparatory workshop prior to the summit. In the preamble of the charter the pitiful conditions under which many children live and the legacy of apartheid are specifically mentioned while an underlying feature of the charter is its repeated appeal for the removal of all forms of discrimination, violence and abuse (Children's Charter 1992: 4-12).

Because the political circumstances have changed since the drafting of the **Children's Charter of South Africa**, the **NCRC** and the **Community Law Centre** are hoping to jointly host a children's conference in Durban towards the middle of 1995. The purpose of the conference will be to revise the present charter. The delegates will attend a number of workshops of children's rights before attending the actual conference as it is believed that these workshops - co-ordinated by the **Community Law Centre** - are necessary to prepare the children for the task of deliberating children's rights issues and revising the current charter. These workshops are also seen to extend the children's knowledge regarding children's rights and this enables them to transfer this knowledge to their communities (Bennett 1995; Gardner 1995). Because the document is the work of children, it will be interesting to determine from the revised charter whether children have in the interim period experienced any change of heart towards their rights or their needs.

6 CLOSING REMARKS

The above discussions do not provide a comprehensive view of all the events, causes or consequences of matters affecting children. Such an undertaking could provide sufficient material for a complete dissertation on its own! What has been attempted was to provide an outline with sufficient detail to be meaningful, of the circumstances that have lead to individuals, organisations, (both locally and internationally) and the various African states to intervene on the behalf of the child in Africa.

The issue is now laid to rest and in the final chapter the findings of all the previous chapters will be consolidated and evaluated in an attempt to determine the significance and the implications of children's rights movements.

6

CHILDREN'S RIGHTS MOVEMENTS: A SYNTHESIS

This is not the end, this is not even the beginning of the end.

This is just the end of the beginning.

(Winston Churchill)

CHAPTER 6

CHILDREN'S RIGHTS MOVEMENTS: A SYNTHESIS

1 INTRODUCTION

Children are not a transient social group nor childhood a temporary social phenomenon. Children and childhood have in the past, are at present and will in the future be part of the daily life experience. It has been said that the attitude of the adults of the society towards its children and the rights they bestow upon these children reflect the state of that particular society (South African Outlook 1992: 103-106).

Since the Renaissance-Humanist period, a spirit of respect for the [adult] individual - for his rights and freedom - has prevailed [see 2: 2.3]. In the twentieth century, this perception was extended to children [see 2: 5.3; 4: 3.1 & 5: 5.4.2] and it was this issue that formed one of the focal points of this dissertation.

The objectives of the investigation as described in Chapter 1 [see 1: 4.2] were to obtain greater insight into the issue of children's rights and consequently to suggest guidelines or criteria according to which documents claiming to serve the interests of children can be assessed. In this chapter, the author will also attempt to indicate the implications of children's rights movements for the status of children as well as for the provision of education. In closing, comments will be made on the imposition that could be placed on parents, the state and the community to ensure that children are empowered to enjoy and exercise their rights. Finally, attention will be given to a number of recommendations spanning the range of the determined objectives.

2 THE IMPLICATIONS OF CHILDREN'S RIGHTS MOVEMENTS FOR THE RIGHTS OF THE CHILD

Children are born physically weaker and less competent than adults and are unable to survive independently (see 4: 4.3). Special protection is thus a prerequisite for survival. However, children are both *being* and *becoming* and undergo successive qualitative transformations requiring commensurate changes in status as they pass from one stage of development to the next (see 4: 4.2 & 4: 4.4) - put differently - from perceived incompetency to competency. It seems reasonable to allow the child increased participation in decisions affecting him as his capacity to make informed decisions develops because ultimately, as an adult, the child will be expected to make his own decisions and accept responsibility for their outcome - a competency which needs to be developed.

In the bid to establish fair and humane treatment of children, early child advocates concerned themselves with determining the perceived needs of children and then, with the aid of the state, translating these needs into legally enforceable rights (see 3: 6). In retrospect, it can be concluded that the rights bestowed on children can be classified in terms of rights that offer the child protection, rights that provide for the child's needs, and rights that grant the child the opportunity for participation in matters in which he is involved. The orientation of those advocating for the rights of children determines the nature - whether protection, provision or participation - of the right. The scope of the child's rights thus ranges from rights that arise from identifying and meeting the basic survival and development needs of the child to rights that promote the liberation and person status of the child.

Rights are generally associated with correlative duties (see 2: 4.2; 5: 3.3 & 5: 4.3.1) and therefore a child's right by implication places parents, society or the state under an obligation to fulfil a certain duty. Because the child is primarily the responsibility of its parents on whom he relies for *inter alia* his welfare and education, it follows that the child's claim to a right is usually a claim against the parent. The claim to a right of provision or protection generally poses little threat because of the inherent nurturant nature of such rights that require the discharging of parental responsibilities customarily associated with parenthood. It would seem though that the child's claim to a right to participation in decisions in matters that involve him, holds potential for conflict between parent and child. Claiming rights to participation could be seen to challenge parental authority or to require the parent to fulfil unaccustomed duties. The parent-child relationship should not be antagonistic or based on confrontation but should rather be a relationship of mutual respect

in which the burden of the respect for the rights of others is rewarded with the benefit of having one's own rights respected.

Nevertheless, protection/provision and participation are not opposite poles on a continuum of rights: one needs to recognise that interaction between these two "categories" of rights is inevitable. To illustrate: denial of full participation (self-determination) rights on the grounds of immaturity reflects a protection (nurturant) dimension. There is thus a delicate balance between the child's right to make an informed decision and the parent's need to protect the child from himself. It is under such circumstances that parental guidance or control comes into play - the child has a right not to be abandoned to his own right.

The matter of rights to participation, protection and provision is best understood when a general classification of the propensity of the advocates claiming these rights for children is made and examined. Two broad categories are distinguished and discussed.

2.1 The advocate as a child saver

The early child advocates can be classified as *child savers* and focused on dealing with matters that would improve the physical, moral and emotional welfare of the child. Protection of and provision for the welfare of the child whose parents were either unable or unwilling to provide for the child was the primary focus of these early child advocates (see 4: 1). It could be said that this particular form of advocacy was *nurturance* orientated. By identifying the perceived needs of the child (see 2: 3.3.4), these advocates proceeded to provide what was presumed beneficiary in terms of services, environments or experiences. Specific issues dealt with in the research included advocacy to improve working conditions, to limit parental authority, to provide for the needs and reform of the destitute, indigent and delinquent child, and to protect the morals of the child in industry and on the street (see 3: 3.2-3.4; 3: 4.2-4.5 & 3: 5.2-5.5).

Because children are essentially less capable and powerful than adults, advocacy on their behalf is necessary (see 2: 5.2 & 2: 5.6). Those persons or groups advocating on behalf of the child ranged from altruistic individuals [e.g. Robert Raikes [see 3: 3.4], Enoch Wines [see 3: 4.4] and Jean Jaques Bourcart [see 3: 5.2]], to interest groups [e.g. the various branches of the **Society for the prevention of cruelty to children** [see 3: 4.3]] and to state initiated commissions of enquiry [e.g. **A Parliamentary Committee on the Protection of Infant**

Life [see 3: 3.3]].

The motives of the child advocates reviewed in Chapter 3 of this dissertation were varied. Some acted from altruistic motives, others to promote particular religious doctrines (see 3: 3.4), to procure cheap labour (see 3: 3.4), to deal with immigrant problems and cultural and religious diversity (see 3: 4.3), to curtail the operations of business competition (see 3: 4.2), to maintain social stability (see 3: 5.3) and to reduce the drain on the public treasury by dealing with "disruptive elements" by removing them from society (see 3: 4.3). Compared to the English and Americans, the motives of French reformers appear to have rested rather along socialistic principles than on humanitarian or altruistic ones (see 3: 5.6).

In the twentieth century, the international community entered the arena of children's rights advocacy and international children's rights documents were forthcoming. These documents, *inter alia* the **Geneva Declaration on the Rights of the Child**, the **United Nations Declaration of the Rights of the Child** and the **Declaration of the Rights and Welfare of the African child**, deal with similar issues of provision and protection (see 4: 2.2).

An important point is that the basis of providing for and protecting the child is determined by the advocate himself - the child is not consulted neither does he participate in the decision regarding that which is considered good or desirable for him. This point is significant, as the participation of the child in decision-making is the point at issue in advocacy aimed at "liberating" the child.

2.2 The advocate as a child liberator

The development of movements aimed at *liberating* the child from childhood and affording him full adult status with recognition of the associated rights was beyond the scope of this dissertation. However, the aspect of child participation or self determination - which could be described as the essence of child liberation - is dealt with comprehensively and accountably in the United Nations **Convention on the Rights of the Child** (see 4: 3.5 & 4: 7).

The child is given the right to exercise control over his own environment and to make autonomous decisions regarding issues which involve and affect him. In effect he is allowed the right of personal choice. Underlying issues brought into play are *inter alia* the child's

evolving capacity (see 4: 4.2), best interests (see 4: 4.1), and self-determination and autonomy (see 2: 5.4 & 4: 5.2.2). The implied prerequisite to the right to self-determination, is the right to education - an issue that will be discussed later on in this chapter (see 6.4). Recognition of the right to self-determination is also in effect recognition for the respect of the personhood of the child (see 4: 3.5), an issue which is closely related to the development of the status of the child.

3 THE IMPLICATIONS OF CHILDREN'S RIGHTS MOVEMENTS FOR THE SOCIAL STATUS OF THE CHILD

From the study of the evolution of children's rights movements, it is found that a change in the view and status of the child occurred on three levels: the social, metaphysical or philosophical, and guardianship and legal status levels. Although three different realms are distinguished, the segregation is merely cosmetic. The interrelationship among and co-existence of the role players - society at large, social groups, state and family - is a social prerequisite and reality (see 2: 5.2 & 4: 2.1) and therefore the findings must be integrated to provide an accurate view of the transformation which took place.

The findings from the historical overview conducted in Chapter 3 of the dissertation could offer a possible reason for the prevailing deplorable status of many of the world's children. In the proclaimed child-orientated era of the twentieth century, many essential needs for survival and development are not being met (see 4: 2). When it is remembered that the worth of the child in the past rested to a large extent on his utility value, it could be conjectured that the low social status of many children worldwide could possibly be attributed to and be aggravated by the cost of raising children, the extension of the period of childhood as a result of compulsory school attendance legislation and the consequent decrease in the child's economic utility and diminished view of the worth of the child.

The findings of the research in terms of the changes in the view of the child on the social, philosophical and legal status levels will now be briefly reviewed.

3.1 The evolution of the social status of the child

The major development in the social standing of the child was the move from property status to person status (see 3: 3.1). As chattel, the child's worth (and exploitability) was centred in his:

- commodity value as an item to be exchanged, sold or exploited (e.g. as servants, beggars or prostitutes) (3: 3.1; 3: 4 - 4.1 & 3: 5.1);
- labour potential, initially in domestic agrarian and trade economies, but subsequently also in the factory and mining industry (see 3: 3.1; 3: 3.2; 3: 4.1; 3: 4.2; 3: 5.1 & 3: 5.2).

In France, child factory labour was slower to gain prominence because industrialisation was later in gaining a foothold than in England and America (see 3: 5.1).

In none of the exemplars studied was the necessity of child labour doubted nor the incidence of child labour questioned. In colonial America, child labour was sanctified by the religious ethic for according to the Puritan belief, work was an essential prerequisite for the attainment of salvation (see 3: 4.2).

By the turn of the century, childhood was recognised as a distinct period of human existence worthy of recognition - worthy of being protected from industrialisation, commercialism and the related infractions (see 3: 3.5; 3: 4.2 & 3: 5.5). This notion was supported by international documentation on the rights of children (see chapters 4 and 5). The child was seen as a person with certain inalienable rights. Included in these perceived rights, was the child's right to be educated. The motivation for according the child this right to education was to

- meet a social need by providing responsible, skilled and economically useful individuals to supply a highly skilled and differentiated labour force ensuing from industrial and technological advancement - hence the profusion of labour and compulsory school attendance legislation (see 3: 3.2; 3: 3.4; 3: 3.5; 3: 4.2; 3: 4.5; 3: 5.2 & 3: 5.4);
- ensure social stability and uniformity by depending on the proselytising effect of compulsory or mass education (see 3: 4.1 & 3: 5.4);
- develop the child's inherent potential so as to acknowledge and preserve his human dignity (see 4: 5.2.1 & 5: 4.3.1).

Acknowledgement by the justice system of the person status of children was forthcoming in the *re Gault* verdict in 1967 when children were identified as having constitutional rights similar to adults (see 2: 5.1). International recognition of the person status of the child is entrenched in the United Nations **Convention on the Rights of the Child** (see chapter 4).

Not only did society at large progressively alter its view of the status of the child, philosophers and theologians were also to reflect on and propagate particular views of the child.

3.2 The evolution of the metaphysical view of the child

Moralists and theologians applied doctrine and training on children not only in the hope of securing converts but also because of a deep concern for the eternal welfare of the child. Calvinists (see 3: 3.1 & 3: 3.4) and Puritans (see 3: 4 & 3: 4.5) alike viewed the child as depraved and inherently sinful and in need of strict control and restraint. By the nineteenth century the qualities of innocence and human dignity were associated with children and the desire to foster these characteristics through conscious parenting emerged. Support of this view was provided by the development of the child welfare sciences and the availability of child rearing manuals (see 3: 3.1; 3: 4.1 & 3: 5.1).

The above is an indication of changes in the perceived moral worth of the child. However, the perception of legal jurisdiction over the child also altered.

3.3 The development of the concept of guardianship and legal status of the child

Initially the child was under the complete control (power) and jurisdiction of the father (see 3: 3.1; 3: 4.1 & 3: 5.1). Intervention to limit the power of parents occurred at community level by those advocating for the protection and provision of children. Deficiencies of common law were gradually remedied by the passing of statute law and towards the close of the nineteenth century the doctrine of *parens patriae* was entrenched. The state assumed a more active role in protecting the interests of children against the unqualified authority and control of their parents - and the rest of society. Legislation covered the child's right to protection against cruelty and neglect; protection against exploitation in the workplace; protection against parental power; the provision of physical maintenance; provision for the

reform of the juvenile offender and provision for education (see 3: 3.2 - 3: 3.5; 3: 4.1 - 3: 4.5 & 3: 5.1 - 3: 5.5).

More recently, the international community has accepted responsibility for ensuring that children enjoy inalienable human rights and that they be protected from parents, societies and states that violate their human rights. Through international declarations and conventions specific ideals for child survival, care, provision and participation have been enumerated. Through the ratification of international conventions, states are legally obliged to develop state policies which will uphold the aims, values and rights contained in these documents (see 4: 5-5.3; 4: 6; 5: 4 - 4.4 & 5: 5.6).

One of the most fundamental *provision* rights to emanate from these conventions, is the child's right to receive education.

4 THE IMPLICATIONS OF CHILDREN'S RIGHTS MOVEMENTS FOR THE EDUCATION OF THE CHILD

The right to education as a human right was added after the initial rights to life, liberty and equality were proclaimed and protected in the first human rights documents (see 2: 2.4). These initial rights guaranteed human survival. Education as a right was primarily a societal interest and only later recognised as an inalienable right directed at fostering the dignity of the individual. The child's right to education can be seen as a logical outcome of affording the child person status and thereby recognising his human dignity. The right to education can also be viewed as both an economic as well as a moral necessity - economic, to ensure independence and to fulfil a social need; and moral, in pursuit of self-actualisation.

There are certain factors that influence the right to education and also prerequisites that need to be fulfilled before the right to education can be optimally utilised. These matters - reminiscent of Maslow's hierarchy of basic human needs - will be briefly discussed after the review of the implications of children's rights movements for education.

4.1 The rationale for and authorisation of the right to education

The growing perception of the importance of childhood (as evidenced by the progression from property to person status) is related to an increasing perception of the importance of education. Initially, education was invariably viewed more as an imposition than an asset and was often a subsidiary motive of the legislation passed (see 3: 3.4). Society was also suspicious of compulsory and organised schooling and feared that it would bring about social conformity and egalitarianism by the indiscriminate inculcation of middle-class values on the populace (see 3: 3.4 & 4: 1). This concern was not unfounded as evidenced by the success of the *Americanisation* of the culturally, socially and religiously diverse America. By using standardised teaching methods and learning content, it was possible to establish a common set of values and cultural background for all American children regardless of race, culture or social class (see 3: 4.5).

Factory legislation was the first legislation passed which dealt with the child's right to education and here the number of hours of schooling that the factories were to conduct was specified. Compulsory school attendance legislation followed later and was designed to enforce compulsory schooling, to improve school attendance and to define the legal obligation of parents (see 3: 3.2-3.5; 3: 4.2-4.5 & 3: 5.2-5.4). As mentioned previously, the purpose of education was initially to meet economic and social needs and only later to provide for the need of the child as an individual (see 6: 2).

The first international recognition of the child's right to education is entrenched in the **Universal Declaration of Human Rights**, the **United Nations Declaration of the Rights of the Child** (see 4: 2.2) and the **United Nations Convention on the Rights of the Child** (see 4: 3; 4: 4 & 4: 5). At local level the **Constitution of the Republic of South Africa** makes provision in section 32 of the act for education (see 5: 5.4.2).

The right to education could be claimed in consequence of the recognition of the status of the child as a person. The **United Nations Convention on the Rights of the Child** acknowledges the person status and thus the dignity of the child and focuses attention on the child as a rational, autonomous individual who has the right to self-determination (see 4: 3.5). The latter can only be achieved by exercising the right to education.

If it is endorsed that the distinguished needs of the individual can be translated into correlative rights and if the hierarchy of needs as advanced by Maslow (see 2: 3.3.4 & 4: 5.3)

is accepted as being an appropriate representation of basic human needs, it follows that self-determination or self-actualisation represents one of the higher ranked needs of the individual and that the individual would thus have a legitimate claim to aspire to fulfil his inborn potential to the fullest. However, the child needs a sound education to grow into a self-sufficient adult and consequently compulsory school attendance and compulsory education should not be confused. The child has a ensuing right to education which is relevant, stimulating and fulfilling to provide him with the opportunity to develop his potential optimally.

The child's benefit from education however, depends on factors external to the influence of the school and education system and his right to education. Numerous such factors can be distinguished but a selected number that were identified in the research undertaken will be reviewed.

4.2 Prerequisites for the actualisation of the right to education

Certain external factors undoubtedly influence the young person's potential for achievement and need to be dealt with or resolved so that the child can derive full benefit from the education offered. Because the relevance of these issues is self-evident, the points will merely be listed followed by brief comments or motivation for their inclusion.

Before the child can enjoy the right to education the following prerequisites need to be fulfilled:

- **biological prerequisites** *inter alia* parental love, affection, basic nutrition and health care (see 4: 3.4; 4: 5.1; 5: 4.2; 5: 4.3.1; 5: 5.3.2.3; 5: 5.5.3 & 5: 5.6);
- **psychological prerequisites** *inter alia* protection of the family unit as the natural environment for the growth and well-being of the child, a climate conducive to learning (see 4: 3.4; 4: 5.2.2; 5: 4.3.1 & 5: 5.5.3 & 5: 5.6);
- **economic prerequisites** *inter alia* provision of free schooling for those who are unable to afford tuition (see 4: 5.2.1; 5: 4.3.4; 5: 5.3.2.3; 5: 5.5.3 & 5: 5.6);
- **social prerequisites** *inter alia* protection of physical and moral integrity, freedom from discrimination; the opportunity for play and recreation (see 4: 5.1; 4: 5.2.1; 5: 5.4.1; 5: 5.5.3 & 5: 5.6).

The United Nations **Convention on the Rights of the Child** sets the legal framework for dealing with each of these factors and is the most comprehensive of all documentation reviewed in this dissertation in addressing the issues cited above. It should also be mentioned that in the Republic of South Africa the **NPA** compiled by the **NCRC** highlights these issues and urges rapid consideration of the issues by the state (5: 5.5.3).

5 GUIDELINES AND CRITERIA FOR ASSESSING DOCUMENTATION DEALING WITH CHILDREN'S RIGHTS ISSUES

In the light of the fact that the final constitution of the Republic of South Africa is in the process of being drafted, it is concluded that the most significant documents that address the rights of children and which therefore need to be considered prior to passing legislation on children in South Africa are the United Nations **Convention on the Rights of the Child** (because of its international standing), the **African Charter on the Rights and Welfare of the Child** (because of its relevance to South Africa as an African country), the **Constitution of the Republic of South Africa** (because it forms the basis from which the constitution of the country will be drawn up) and the **Children's Charter of South Africa** (because it was drafted by children of this country).

From a review of the documentation pertaining to children as surveyed in this dissertation it would seem that certain issues are of importance when the legitimacy and/or status of a particular document is determined. The following appear to constitute basic criteria for the evaluation of children's rights documentation.

5.1 Universality

Children's rights documents are drafted with *children* in mind - not with the individual child. Yet, in practice, the rights should be applicable to each child individually. Consequently, in the drafting process, the universality of the right and its entitlement are to be considered (see 2: 3.1.1; 2: 3.1.3 & 2: 4). It should not be possible to misinterpret or misunderstand the stipulations of the document.

A point that was made repeatedly (see 2: 4; 2: 4.1 & 5: 3.1) was that African countries do not align themselves fully with all stipulations of the international children's rights documents because it is felt that these documents are *inter alia* insensitive to African circumstances and traditions. Ratification of conventions like the United Nations **Convention on the Rights of the Child** places the ratifying state under an obligation to adjust state legislation in accordance with the stipulations of the convention. However, if the state is not in agreement with each of the stipulations, ratification of the convention is a mere outward token and not a commitment to social change.

Closely related to the criterium of universality is the clarity and unambiguity of the terminology used.

5.2 Clarity and precision of terminology

Vague language cannot crystallise into binding law. Terms such as *appropriate measures* or *best interests* provide no clear internationally accepted standard of appropriateness and are consequently open to broad interpretation (see 4: 3.7 & 4: 4.4).

Vagueness in terminology can be combatted by expanding the scope of the articles of the document. Although it is impossible to stipulate each detail of every right, the stipulations could be so worded that no unscrupulous interpreter of the document could intentionally yet legitimately misinterpret the stipulation or misconstrue the implications of the stipulation for personal interest - and to the detriment of the interests of the child.

5.3 Tenability of implementation

The concept of rights is intimately tied up with cultural values and the outlook of society (2: 3.1.3 & 2: 4.3). The proposed rights should therefore be both generally acceptable to society in general and also possible to implement. It would be unrealistic to believe that implementation would necessarily be uncontested throughout the community - at least some segments of society would dispute the practicality or defensibility of certain rights. The aim is however to strive towards establishing those rights that would be most effective in establishing fair treatment and a just environment for all children.

With regard to the South African situation the following points need to be considered:

- the cultural diversity of the population;
- the influence of customary or traditional law (see 5: 3.3);
- the propensity of Africa to focus on collective or communal rights (see 5: 3.3);
- the emphasis on the duties of members of society rather than on their rights (see 5: 3.3);
- the central position of the family in African society (see 5: 3.3);
- the violation of the human freedom of cultural groups should the convictions of a particular culture be imposed on society at large (see 2: 4);
- the demonstrated resilience of Africa to westernisation (see 5: 3.4)

While it is necessary to ensure that the rights afforded in the documentation are practical, paramount and non-discriminatory, it is also necessary that the document outlines or qualifies the necessary basis to facilitate the realisation of the right.

5.4 Facilitation of the right

The objective of ensuring fundamental humane and just treatment of the child by enumerating various rights would be defeated if the same document did not provide clear guidelines regarding state, social or parental obligations towards facilitating the exercising of the right. To illustrate: the right to free, compulsory education can only be enjoyed if the state is legally obliged to provide that which is necessary to grant free, compulsory education (see 4: 5.2.1).

It is necessary when evaluating children's rights texts to ensure that the required infrastructure to facilitate the exercising of the right stipulated is also firmly entrenched in the same document or in texts acknowledged by the particular document. This point reemphasises the correlation between rights and duties and is fundamental to the deliberation that follows.

6 THE OBLIGATIONS OF THE FAMILY, STATE AND SOCIETY TO ENSURE THE ACTUALISATION OF CHILDREN'S RIGHTS

The view that children are vulnerable and have limited capacity could be construed as paternalistic or disparaging, but it is unfortunately inescapably true. Children, especially the younger ones who are more vulnerable and less able, need to depend on adults to secure and protect their rights (see 2: 5.2). It follows that children's rights can only be realistically developed within a matrix of parental, social and state obligation which safeguard the rights of children (see 4: 2.1).

Because the following proposed obligations of parents (as custodians of the family), the state and the community are self-explanatory and commonly acknowledged, they are merely cited to induce contemplation. A basic precondition to establish a climate conducive to human and children's rights is briefly discussed in closing.

6.1 The obligations of parents

It is said that the health of society is determined by the health of the family. Because the family constitutes the primary life-world of the child, it has the responsibility *inter alia* to:

- foster conditions of warmth, affection and security;
- act in the best interests of the child;
- perform a socialising task;
- prepare the child for his future role as an adult in society;
- provide adequate health care and nutrition;
- perform a primary educational task;
- ensure interaction between itself, the community and the state.

6.2 The obligations of the state

As society becomes more complex, the state needs to play a more active role in ensuring that the rights of children are not violated. Among the numerous obligations which the state has towards its members, it also has the obligation *inter alia* to:

- provide a legal framework for the protection of children's rights;
- initiate legislation to ensure that the rights of the child are respected by the state and society;
- on an ongoing basis review current local and international legislation affecting children;
- provide the required infra-structures of framework that ensure the provision of basic health care, nutrition and education for the child;
- provide an education system that will enable the child to develop his potential optimally;
- not confuse the needs of the state with the needs of the child;
- not confuse compulsory schooling with compulsory education;
- ensure domestic laws meet international requirements for acceptable human rights standards;
- ensure liaison between state, parents and community;
- establish support services and provide basic resources which facilitate the exercising of the child's rights.

6.3 The obligations of the community

The community can play an important part in protecting and advancing the recognition of children's rights. The efforts of what would today be termed **NGO's** in the history of child advocacy in England, America and France, were discussed in detail in Chapter 3 of this dissertation. The efforts of a present-day and local **NGO**, the **NCRC**, were also highlighted in Chapter 5 (see 5: 5.5). Bearing these efforts in mind, it could be said that the community, through the establishment of **NGOs** has the duty to *inter alia*:

- promote public awareness and a culture conducive to and supportive of children's rights;
- strengthen a recognition of and a national commitment to human rights;
- play a constructive role in the development of constitutional law affecting children through advancing policy recommendations and forming pressure groups;
- work collectively in addressing the needs and rights of children and not to duplicate resources;
- liaise with international children's rights bodies;
- establish a congenial relationship between the broader community and the state;
- ensure multidisciplinary representation at management level - *inter alia*

- educationists, child welfare workers, child psychologists;
- engage in ongoing research to strengthen and enhance the rights of children.

6.4 A basic precondition for a climate conducive to human and children's rights

The realisation of the obligations of family, state and community to the child will be optimal under conditions which support a human and children's rights culture. The establishment of such a climate could be facilitated by providing guidance and instruction regarding human and children's rights - in language appropriate to the target group. Unless children are explicitly taught about their rights to provision, protection and self-determination, these rights cannot be exercised other than by adults on children's behalf. Education regarding human rights could be undertaken by the state - formally, in the school curricula - and by the community - informally through the media and special awareness campaigns. This requirement regarding education concerning human and children's rights is explicitly addressed in *Article 29 of the United Nations Convention on the Rights of the Child* (see **Appendix 1**).

This concludes the discussion of the results and conclusions drawn from the research undertaken. At this point, it seems appropriate to suggest certain recommendations that arise from the foregoing discussion.

7 RECOMMENDATIONS

Bearing in mind that:

- children constitute a weak and vulnerable group within society;
- according rights to children makes adults more aware of children's rights and also makes them accountable to children;

the author reservedly submits the following recommendations:

- Social policy should ensure a climate that fosters, respects and supports the family as the basic unit of society to enable it to optimally fulfil its obligations towards children and also to make childrearing easier.

- The full consequences of recognising the child as a person with rights must be grasped by the legislative, executive and judiciary because children are still being subjected to unequal treatment, discrimination, exploitation and degrading treatment.
- The failure of society to meet children's physical, emotional and mental needs must be remedied by appealing to society's sense of social and moral obligation towards children. Awareness campaigns, initiated by social organisations (NGO's) and the state, that aim to sensitise society to its duty to meet the needs of children should be launched. By fostering an appreciation for the benefit of meeting its duties to children, society should be made aware that the consequence will be the creation of successful future adult citizens.
- Future legislation regarding children's rights should feature correlative rights and duties of children, parents, society and the state. This cannot be done in the context of legislation limited solely to children's rights.
- In view of the cultural diversity of the country, and to avert possible conflict of ideals and interests, it is recommended that prior to the enactment of legislation dealing with children, a thorough investigation of African customary law as practised in this country be undertaken to determine the current social practice with special reference to controversial issues (e.g. traditional cultural practices and the status of the girl child) dealt with in the **African Charter on the Rights and Welfare of the Child** and the **United Nations Convention on the Rights of the Child**. Recommendations regarding compatibility of African customary law and human rights tenets should be presented and considered.
- Although ratification of the **Convention on the Rights of the Child** sets the legal framework of ensuring minimum standards regarding the treatment of children to which state legislation and social policies must adhere, compatibility between customary law in South Africa and the convention should first be determined to ensure commitment to the ideals of the convention and to obtain clarity regarding the interpretation and implications of all the articles of the convention. Ratification of the convention does not ensure unconditional compliance with the standards.

- The establishment of a children's rights commissioner (Ombudsperson) as an independent statutory office to *inter alia* promote and protect the interests of children, to continually assess the conditions of children, and to act as co-ordinator for the development of a national child protection policy should be seriously considered. This system has been successful in countries such as Norway and New Zealand. Research regarding the scope of work of such a commissioner should first be undertaken.

8 A CONCLUDING REMARK

The United Nations **Convention on the Rights of the Child** recognises the child as a bearer of rights but also recognises the child as a child - for eighteen years - and intermittently emphasises the importance of a happy childhood. Perhaps one of the most important rights that a child should be entitled to enjoy is that of a contented, untroubled childhood - a childhood where a child has the right to be a child. Possibly the most fundamental violation of children's rights is to deprive the child this right to be a child.

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APPENDIXES

APPENDIX 1

CONVENTION ON THE RIGHTS OF THE CHILD

Entry into force: 2 September 1990.

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART 1

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authoritative or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States Parties recognise that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise

be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child the view of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) for respect of the rights or reputations of others; or
- (b) for the protection of national security or of public order (*ordre public*) or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*) the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attack

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;
- (b) encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) encourage the production and dissemination of children's books;
- (d) encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia* foster placement, kafalah of Islamic law adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote selfreliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) to diminish infant and child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to combat disease and malnutrition, including within the framework of primary health care, through *inter alia* the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) to ensure appropriate pre-natal and post-natal health care for mothers;
- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) to develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present Article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, State Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) make primary education compulsory and available free to all;
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) make educational and vocational information and guidance available and accessible to all children;
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origins,
- (e) the development of respect for the natural environment.

2. No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admission to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to

prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, selfrespect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) no child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) to be presumed innocent until proven guilty according to law;

(ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing

according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witness on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

(a) the law of a State Party; or

(b) international law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognised competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedures.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:

- (a) within two years of the entry into force of the Convention for the State Party concerned;
- (b) thereafter every five years.

2. Reports made under the present Article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 b of the present Article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) the specialised agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) the Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies, any reports from State Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) the Committee may recommend to the General Assembly to request the Secretary General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) the Committee may make suggestions and general recommendations based on information received pursuant to Article 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from State Parties.

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary general of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary General.

Article 53

The Secretary General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary General of the United Nations.

APPENDIX 2

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

1990

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled "African Charter on the Rights and Welfare of the Child",

Considering that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and Peoples Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

Recalling the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia from 17 to 20 July, 1979 recognized the need to take all appropriate measures to promote and protect the rights and welfare of the African Child;

Noting with concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care;

Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding;

Recognizing that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security;

Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child;

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone;

Reaffirming adherence to the principles of the rights and welfare of the child contained in the declarations, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

Have agreed as follows:

PART I RIGHTS AND DUTIES

Article 1: Obligation of states parties

1. The Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to take the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international convention or agreement in force in that State.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a child

For the purposes of this Charter, a child means every human being below the age of 18 years.

Article 3: Non-discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the Child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 4: Best interests of the child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate laws.

Article 5: Survival and development

1. Every child has an inherent right to life. This right shall be protected by law.

2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

3. Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and nationality

1. Every child shall have the right from his birth to a name.

2. Every child shall be registered immediately after birth.

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by law.

Article 8: Freedom of association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of thought, conscience and religion

1. Every child shall have the right to freedom of thought, conscience and religion.

2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to education.

2. The education of the child shall be directed to:

- (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;
- (c) the preservation and strengthening of positive African morals, traditional values and cultures;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
- (e) the preservation of national independence and territorial integrity;
- (f) the promotion and achievements of African Unity and solidarity;
- (g) the development of respect for the environment and natural resources;
- (h) the promotion of the child's understanding of primary health care

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

- (a) provide free and compulsory basic education;
- (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
- (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
- (d) take measures to encourage regular attendance at schools and the reduction of drop-out rate;
- (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 12: Leisure, recreation and cultural activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the Child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and health services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

- (a) to reduce infant and child mortality rate;
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to ensure the provision of adequate nutrition and safe drinking water;
- (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
- (e) to ensure appropriate health care for expectant and nursing mothers;
- (f) to develop preventive health care and family life education and provision of
- (g) to integrate basic health service programme in national development plans;
- (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of basic service programmes for children;
- (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.

2. States Parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of the Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

- (a) provide through legislation, minimum ages for admission to every employment;
- (b) provide for appropriate regulation of hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection against child abuse and torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.

2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17: Administration of juvenile justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.

2. States Parties to the present Charter shall in particular:

- (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
- (b) ensure that children are separated from adults in their place of detention or
- (c) ensure that every child accused of infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (v) shall not be compelled to give testimony or confess guilt.
- (d) prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parental care and protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority subject to judicial review determine in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect is made.

4. Where a child is apprehended by a State Party, his parents or guardians shall as soon as reasonably practical be notified of such apprehension by that State Party.

Article 20: Parental responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty:

- (a) to ensure that the best interests of the child are their basic concern at all times;
- (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures:

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programme: particularly with regard to nutrition, health, education, clothing and housing;
- (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
- (c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against harmful social and cultural practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory.

Article 22: Armed conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human right and humanitarian instruments to which the States are parties.

2. States Parties shall undertake to co-operate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *Mutatis Mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- (a) establish competent authorities and procedures to determine matters of adoption and carry out in accordance with applicable laws and procedures and on the basis of all relevant and reliable information that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child affected by inter-country adoption enjoy safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in trafficking or improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs.
- (f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance.

2. States Parties to the present Charter:

- (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;
- (b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection against apartheid and discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under *apartheid* and in States subject to military destabilization by the *Apartheid* Regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and *apartheid* on the African Continent.

Article 27: Sexual exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;

- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, trafficking and abduction

1. States Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.

Article 30: Children of imprisoned mothers

States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

Article 31: Responsibilities of the child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a) to work for the cohesion of the family, to respect his parents and elders at all times and to assist them in case of need;
- (b) to serve his national community by placing his physical and intellectual abilities at its service;
- (c) to preserve and strengthen social and national solidarity;
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- (e) to preserve and strengthen the independence and the integrity of his country;
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.

APPENDIX 3

THE CHILDREN'S CHARTER OF SOUTH AFRICA

1992

PREAMBLE

We, the delegates of the International Children's Summit held from 27 May to 1 June 1992, acting as representatives from the regions of Western Cape, Eastern Cape, Southern Cape, Northern Cape, Boland, Border, Midlands, Southern Natal, Northern Natal, Namaqualand, PWV, Eastern Transvaal, Western Transvaal, Northern Transvaal, Northern Orange Free State Southern Orange Free State, Transkei and on behalf of all the children of South Africa,

Realizing that, all children are created equal and are entitled to basic human rights and freedoms and that all children deserve respect and special care and protection as they develop and grow and

Recognizing that, within South Africa, children have not been treated with respect and dignity, but as a direct result of Apartheid have been subjected to discrimination, violence and racism that has destroyed families and communities and has disrupted education and social relationships and

Acknowledging that, at the present time, children have not been placed on the agenda of any political party, or the existing government or within the CODESA negotiations and are not given the attention that they deserve.

Taking into consideration the cultural values, languages, and traditions of all the children and,

Recognizing the urgent need for attention to improving the life of children and protecting their rights in every region, in particular those regions which have been especially subjected to violence, political unrest and poverty.

Have agreed upon the following:

PART 1

Article One

For the purposes of the charter, a child means any person under the age of 18 years old, unless otherwise stated.

Article Two

Children have been and continue to be abused, tortured, mistreated, neglected and abandoned by the people of South Africa. Children are not treated with the respect and dignity that every human being deserves, but instead are subjected to violence, poverty, racism, and the ignorance of adults. Children continue to suffer from the inequalities of apartheid, especially in the area of education. Children do not receive proper health and medical care and attention, yet do not have the right to demand treatment. Children are arrested, tried without lawyers and held in prisons.

Children are beaten and abused by the police and by gangs and other adults. Children are the future leaders of tomorrow, but they are not given the right to participate in consultations or negotiations about their future. The government and other political parties have put children last, not first.

We therefore set forth that all children of South Africa are entitled to the following rights and protections:

PART 11

Article One

1. All children have the right to protection and guarantees of all the rights of the Charter and should not be discriminated against because of his/her or his/her parents or family's colour, race, sex, language, religion, personal or political opinion, nationality, disability or for any other reason.

2. All political parties, the government, CODESA, the future government, communities, families, and parents should do everything possible to ensure that children are not discriminated against due to his/her or his/her parents or family's colour, race, sex, language, religion, personal or political opinion, nationality, disability or for any other reason.

Article Two

All children have the right to a name and nationality as soon as they are born.

Article Three

1. All children have the right to express their own opinions and the right to be heard in all matters that affect his/her rights and protection and welfare.

2. All children have the right to be heard in courtrooms and hearings affecting their future rights and protection and welfare and to be treated with the special care and consideration within those courtrooms and hearings which their age and maturity demands.

3. All children have the right to free legal representation if arrested.

4. All children have the right to participate in the government of the country and special attention should be given to consultations with children on their rights and situation.

Article Four

All children have the right to freedom to practice their own religion, culture or beliefs without fear.

Article Five - Violence

1. All children have the right to be protected from all types of violence including: physical, emotional, verbal, psychological, sexual, state, political, gang, domestic, school, township and community, street, racial, self-destructive and all other forms of violence.

2. All children have the right to freedom from corporal punishment at school, from the police and in prisons, and at home.

3. All children have the right to be protected from neglect and abandonment.

4. All children have the right to be protected from township and political violence and to have "safe places" and to have community centers where they can go for help and safety from violence.

5. All children have the right to be educated about child abuse and the right to form youth groups to protect them from abuse.

6. All persons have the duty to report all violence against, abuse of and neglect of any child to the appropriate authorities.

7. Children should not be used as shields or tools by the perpetrators of violence.

8. Children have the right to say no to violence.

9. The media has the duty to prevent the exploitation of children who are victims of violence and should be prohibited from the promotion of violence.

10. All children have the right to be protected from violence by the police and in prisons.

11. Children should not be obligated or forced to follow adults in their political involvements.

12. All children have the right to be free from torture, detention or any other physical or emotional violence during Apartheid or at times of unrest or war.

13. All children have the right to be protected from drug and alcohol abuse by their parents, families and others and to be educated about these forms of violence.
14. Children have the right to a special children's court and medical facilities to protect them from violence.
15. Special groups and organizations should be formed within the communities to protect and counsel victims of all types of violence.
16. No child should be held in prison or police cells at any time.

Article Six - Family Life

1. All children have the right to a safe, secure and nurturing family and the right to participate as a member of that family.
2. All children have the right to love and affection from their parents and family.
3. All children have the right to clothing, housing and a healthy diet.
4. All children have the right to clean water, sanitation and a clean living environment.
5. All children have the right to be protected from domestic violence.
6. All children who do not have a family should be provided with a safe and secure place to live and clothing and nutritious food within the community where they live.
7. Special protections should be given to children who are orphaned or abandoned as a result of violence or any other reason or are refugees or returning from exile and every effort should be made to place them within a safe and secure "family".

Article Seven - Health & Welfare

1. All children have the right to adequate health care and medical attention both before and after birth.
2. All children have the right to be protected from harmful and toxic substances such as cigarettes, drugs, and alcohol and to be educated about the effects on their health and environment.
3. All children have the right to free and comprehensive health services, especially in schools, including screening of diseases, treatment of diseases and physical and psychological treatment and services.
4. All children have the right to demand health and medical care without the permission of their parent or guardian.
5. All children have the right to be protected and educated about AIDS and to be given adequate health care and protection. Any child whose family is infected with AIDS should be given special care and protection.
6. Disabled children have the right to special health care and protections.

Article Eight - Education

1. All children have the right to free and equal, non-racial, non-sexist and compulsory education within one department as education is a right not a privilege.
2. All children have a right to education which is in the interest of the child and to develop their talents through education, both formal and informal.
3. All teachers should be qualified and should treat children with patience, respect and dignity. All teachers should be evaluated and monitored to ensure that they are protecting the rights of the child.
4. Parents have the duty to become involved in their children's education and development and to participate in their children's education at school and at home.

5. All children have the right to play and to free and adequate sports and recreational facilities so that children can be children.
6. All children have the right to participate in the evaluation and upgrading of curriculum which respects all the traditions, cultures and values of children in South Africa.
7. All children have the right to education on issues such as sexuality, AIDS, human rights, history and background of South Africa and family life.
8. All children have the right to adequate educational facilities and the transportation to such facilities should be provided to children in difficult or violent situations.

Article Nine - Child Labour

1. All children have the right to be protected from child labour and any other economic exploitation which endangers a child's mental, physical, or psychological health and interferes with his/her education so that he/she can develop properly and enjoy childhood.
2. All children, especially in rural areas, should be protected from hard labour including farm, domestic or manual labour or any other type of labour.
3. All children have the right to be protected from prostitution and sexual exploitation such as pornography.
4. There should be a minimum age of employment and no child should be forced to leave school prior to the completion of matric for the purposes of employment.
5. There should be regulations and restrictions on the hours and types of work and penalties for those who violate these regulations.
6. All children have the right to be protected from child slavery and from the inheritance of labour or employment from their parent or family.

Article Ten - Homeless Children

1. No child should be forced to live on the streets.
2. Homeless children have the right to be protected from harassment and abuse from police, security guards and all other persons and every person has the duty to report any abuse or violence against children.
3. Homeless children have the right to a decent place to live, clothing and a healthy diet.
4. Street children have the right to special attention in education and health care.
5. Communities and families have a duty to protect their children from becoming homeless and abandoned.
6. All persons should be made aware of the plight of homeless children and should participate in programmes which act to positively eradicate the problem of homeless children.
7. The government has the duty and responsibility for homeless children.

RESOLUTIONS

We, the children of South Africa, therefore demand that:

1. The existing government, the African National Congress, the Pan Africanist Congress, Inkatha Freedom Party, CODESA, the National Party, the Democratic Party and all other parties presently involved in negotiations acknowledge, adopt and support the Children's Charter via the establishment of committees, working groups and commissions that will ensure that children's rights will no longer be ignored in South Africa and that children will be placed first on the agenda, not last. Also, that these groups act to support existing children's structures and organisations.

2. A children's representative or council of representatives should be placed on CODESA, and within the existing and future governments. Children have the right to participate in and be consulted with about Government.

3. The future constitution and bill of rights includes special provisions for children's care and protection and development.

4. The National Children's Committee (NCRC) and all other children's structures and organisations, both domestic and international, acknowledge, accept and support the Children's Charter in as many ways as possible.

5. That communities and regions act to acknowledge, adopt and support the Children's Charter and ensure that the needs of their children are addressed with urgency.

6. That the delegates of the Summit act to ensure that their regions, communities, schools, families, adults and peers are informed about the Children's Charter and that there is continuing evaluation about the way forward to a culture of children's rights.

Children will no longer remain silent about their rights, but will speak and even shout out about their needs and demands.

Approved on this the 1 day of June 1992.